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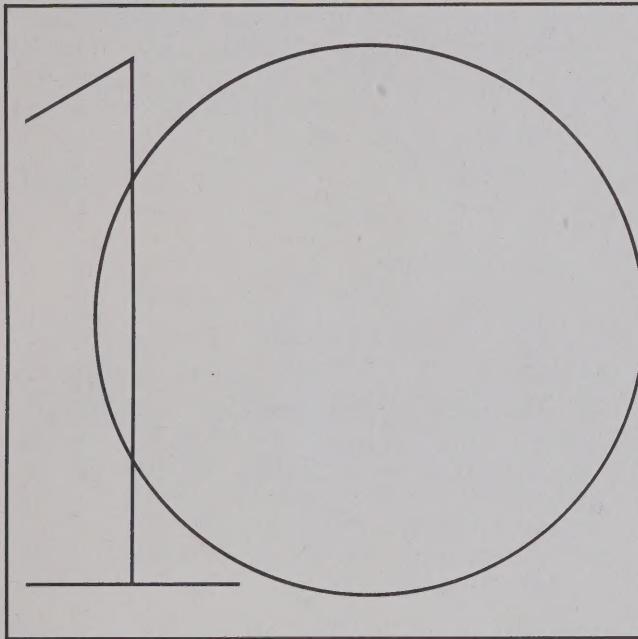
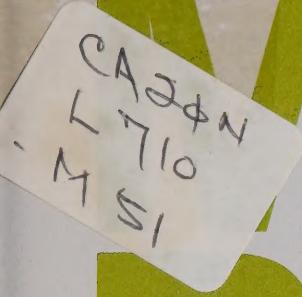
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# Monthly Bulletin

(92)



## Office of Arbitration

Miss Jean M. Read, Director.



Ontario

**Ontario Ministry of Labour**  
400 University Avenue, 6th Floor  
Toronto, Ontario  
M7A 1T7  
Tel. (416) 965-5669

Hon. Robert Elgie, M.D., Minister  
T.E. Armstrong, QC, Deputy Minister

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Office of Arbitration as a service to  
persons involved in labour-management  
arbitrations.

### Appointment of Arbitrators

Forms for requests for appointment of arbitrator under Section 37a of *The Labour Relations Act* are available on request, from the Office of Arbitration.

### Arbitrators

The following person is included on our list of approved arbitrators:

Mr. Patrick Martin Draper, R.R.#2, Consecon, Ontario, K0K 1T0; telephone (613) 399-2684.

### Editorial Correction

Award (53) was incorrectly reported in *Monthly Bulletin*, January, 1980, Volume 9, Number 10, under the heading of *Job Posting*. It should have read:

Additional requirements to those contained in job description in collective agreement—requirements improper; grievance allowed. *Re Croydon Furniture Systems Inc., and United Steelworkers of America, Local 5019; Typhair grievance*, September 28, 1979. Curtis—6 pages. (53)

### Expedited Grievance Arbitration

The first applications made under section 37a of *The Labour Relations Act* were submitted to the Office of Arbitration in late December, 1979. By the middle of March, 1980, 23 requests for speedy arbitration had been received; status of these cases as of March 21, 1980 was as follows:

Settled by Grievance Settlement Officer	13
Awaiting mediation by Grievance Settlement Officer	2
Mediation unsuccessful—awaiting arbitration hearing	3
Arbitration hearing held—awaiting award	2
Arbitration hearing held—award filed	3

In the three cases where awards have been filed, the time period from date of receipt of application by the Office of Arbitration to the date the award was handed down, was less than two months.

**Awards**

The following awards were filed with the Office of Arbitration during the month of January, 1980, under *The Labour Relations Act* as amended.

The summary was prepared at the Faculty of Law, Queen's University, under the supervision of C.G. Simmons, B.A., B.C.L., LL.M., and D.D. Carter, B.A., B.C.L., LL.B.

\* Indicates award to be reported in full or in part in *Labour Arbitration Cases*.

**Arbitrability**

Abandonment—union discontinuing grievance during hearing; grievance dismissed as abandoned. *Re General Concrete Limited (Hamilton Division) and United Cement, Lime and Gypsum Workers' International Union, Local 487; Moody grievance*, December 21, 1979. Brunner, Nokes, Sargeant—4 pages. (1)

**Bargaining Unit**

Managerial employees; collective agreement specifying number of managers to be excluded—additional managerial employees included; grievance allowed. *Re Ottawa Journal, Division of F.P. Publications (Eastern) Limited and Ottawa Newspaper Guild, Local 205; union grievance*, January 17, 1980. Majority: Beatty, Lewis—8 pages; dissent: Dinsdale—4 pages. (2)\*

Work currently performed examined—employee falling within bargaining unit. *Re Hydro Electric Commission of Cambridge and International Brotherhood of Electrical Workers, Local 636; policy grievance*, January 17, 1980. Rayner, Wacheski, Senyshen—13 pages. (3)

**Board of Arbitration**

Power to review grievor's demotion where just cause not specifically required by collective agreement—board may only ensure that proceedings carried out fairly; grievance dismissed. *Re Wellington County Board of Education and Ontario Secondary School Teachers' Federation, District 39; MacLean grievance*, January 2, 1980. Majority: Abbott, Stringer—22 pages; dissent: Posen—6 pages; addendum: Abbott—3 pages; addendum: Stringer—2 pages. (4)\*

**Classification**

Assignment of new functions from discontinued job—no "substantial" or "qualitative" change in job; grievance dismissed. *Re H.J. Heinz Company of Canada, Limited and Sheet Metal Workers International Association, Local 286; group grievance*, January 23, 1980. Brandt—7 pages. (5)

Higher classification claimed—reasonableness of management standards assessed; grievance dismissed. *Re Board of Police Commissioners for Township of Sarnia and Sarnia Township Police Association; individual grievance*, December 11, 1979. Welling—10 pages. (6)

Permanent classification of employees with less seniority—validity of selection process and "no family" rule; grievances allowed. *Re Photo Engravers and Electrotypes Limited and Toronto Printing Pressmen and Assistants' Union, No. 10 (Paperhandlers); O'Brien et al grievances*, January 9, 1980. Adams—33 pages; partial dissent: Nicholson; dissent: Winkler. (7)\*

**Collective Agreement**

Termination—union's notice to bargain not serving to terminate agreement; grievance allowed. *Re S & H Construction (Kenora) Limited and United Brotherhood of Carpenters and Joiners of America, Local 1669; union grievance*, January 9, 1980. Majority: Aggarwal, Hautala—16 pages; dissent: Johnson—4 pages. (8)

**Demotion**

Non-disciplinary demotion; grievor's job eliminated resulting in loss of responsibility pay; grievance dismissed. *Re Kirland Lake Board of Education and Ontario Public School Men Teachers' Federation; Hartley grievance*, January 17, 1980. Saltman, Pinkerton, Gordon—8 pages. (9)

Unsatisfactory attendance record over three years because of illness—demotion not in nature of discipline; grievance dismissed. *Re J.B. Jackson Limited and Canadian Food and Allied Workers Union, Local P417; Vandendriessche grievance*, December 5, 1979. Majority: Brunner, Kitchen—12 pages; did not concur: Walsh. (10)

Unsatisfactory work performance—employer ordered to remove warning from grievor's file; grievance dismissed. *Re A.G. Spalding & Bros. of Canada Limited and International Woodworkers of America, Local 2-233; Swift grievance*, December 27, 1979. Teplitsky, Farrar, Schachter—4 pages. (11)

**Discharge**

Absence from work place without permission—progressive discipline imposed for breach of company rule regarding washroom use during shift; grievance dismissed. *Re J.E. Thomas Specialties Limited and United Rubber, Cork, Linoleum and Plastic Workers of America, Local 921; McDonald grievance*, December 31, 1979. Majority: Kennedy, Stringer—9 pages; dissent: Bruder. (12)

Absence from work station without permission and insubordination—grievor's claim of illness not credible; no reason to vary penalty; grievance dismissed. *Re Algoma Steel Corporation Limited and Local 2251 United Steelworkers of America; Wile grievance*, December 31, 1979. O'Shea, Keck, Morley—10 pages. (13)

Absenteeism—grievor absent without leave; grievance dismissed. *Re Consolidated Fastfrate Limited and Teamsters Union, Local 938; Gormley grievance*, January 2, 1980. Majority: Rayner, Black—12 pages; dissent: McRae. (14)

Absenteeism—grievor failing to justify absence; culminating incident; grievance dismissed. *Re Consolidated-Bathurst Packaging Limited and International Woodworkers of America, Local 2-242; Shea grievance*, January 16, 1980. Majority: O'Shea, Rogers—17 pages; dissent: Alper—3 pages. (15)

Absenteeism; grievor's absenteeism rate significantly higher than plant average—grievor reinstated with no compensation and put on six months probation. *Re Canadian Appliance Manufacturing Company Limited and United Electrical, Radio and Machine Workers of America, Local 550; Mills grievance*, December 27, 1979. Majority: O'Shea, Bosnich—12 pages; dissent: Kacur—1 page. (16)

Abusive language directed at supervisor—isolated incident, some provocation by supervisor; two day suspension substituted for discharge. *Re Brown and Roberts Limited and International Association of Bridge, Structural and Ornamental Iron Workers, Local 734; Warrener grievance*, December 31, 1979. Hinnegan—8 pages. (17)

Breach of safety rules—negligent use of fork-lift culminating a record of disciplinary infractions; grievance dismissed. *Re Canadian Industries Limited and United Steelworkers of America, Local 13328; Ouimet grievance*, December 4, 1979. Majority: Beck, Churchill-Smith—12 pages; dissent: Rao. (18)

Conduct during strike—grievor's record otherwise unblemished; reinstatement without compensation. *Re Bell Canada and Communications Workers of Canada; Watters grievance*, January 24, 1980. Burkett—13 pages; dissent: Healy—2 pages; partial dissent: Walsh—1 page. (19)

Consumption of alcohol on company premises—grievance denied. *Re Cable Tech Wire Company Limited and International Brotherhood of Electrical Workers, Local 1590; McDougall grievance*, December 31, 1979. Hinnegan, Brady, Cox—7 pages. (20)

Culminating incident—previous record not justifying discharge; reinstatement without compensation. *Re LePage's Limited and Oil, Chemical and Atomic Workers International Union, Local 9-819; McLean grievance*, January 22, 1980. Kennedy, More, Healy—8 pages. (21)

Culminating incident—work performance complaints not on grievor's record and thus not considered; suspension substituted. *Re Algoma Steel Corporation, Limited and United Steelworkers of America, Local 3933; Cormier grievance*, January 7, 1980. Majority: McLaren, Schultz—13 pages; dissent: Forbes. (22)

Culminating incident; absence from work without notice following progressive discipline and counselling sessions—grievance dismissed. *Re Inco, Limited, and United Steelworkers of America; Moloughney grievance*, December 18, 1979. Majority: O'Shea, Sanderson—21 pages; dissent: Carrier. (23)

Culminating incident; serious breach of safety standards by experienced employee relating to previous record—grievance dismissed. *Re International Nickel Company of Canada, Limited and United Steelworkers of America; anonymous grievance*, December 28, 1979. Majority: Shime, Abbott—8 pages; dissent: Signoretti. (24)

Dishonesty; use of patient's phone for personal long distance calls; grievance dismissed. *Re Board of Governors of Riverdale Hospital and Canadian Union of Public Employees, Local 79; Riel grievance*, November 21, 1979. Majority: Teplitsky, Ronson—5 pages; dissent: Dobson—8 pages. (25)

Falsification of pay records—employer not meeting standard of proof; grievance allowed. *Re Hayes-Dana Limited and United Automobile Workers, Local 676; Gula grievance*, January 24, 1980. H.D. Brown—19 pages. (26)

Fight between two employees—lesser penalty substituted. *Re Lever Detergents Limited and International Chemical Workers' Union, Local 32; McLean grievance*, January 17, 1980. Majority: Palmer, Phillips—9 pages; partial dissent: Clawson—1 page. (27)

Incompetence—grievor unable to perform assigned work; grievance dismissed. *Re Canadian National Institute for the Blind and Canadian Union of Blind and Sighted Merchants, Local 681; Fortier grievance*, January 8, 1980. Majority: O'Shea, Binder—15 pages; dissent: Bezusky. (28)

Insubordination—corrective approach appropriate; reinstatement without compensation. *Re Texport Division of Oxford Warehousing Ltd. and Teamsters Union, Local 938; House grievance*, January 4, 1980. Burkett, Petryshen, Smith—17 pages. (29)\*

Theft—absence of criminal intent considered in assessing penalty; suspension substituted. *Re General Aviation Services Limited and International Association of Machinists and Aerospace Workers, Local 2413; Flight grievance*, January 22, 1980. Prichard—10 pages. (30)\*

Theft—grievor not aware of seriousness of theft of recyclable articles; reinstatement without compensation. *Re Martin Brower Company and Teamsters Union, Local 419; Parker grievance*, November 26, 1979. Majority: Rayner, Black—13 pages; dissent in part: Weir. (31)

Theft—not established; grievance allowed. *Re Canadian Pacific Air Lines Limited and International Association of Machinists and Aerospace Workers, Local 764; Percy grievance*, January 8, 1980. Kennedy, Morel, Watson—21 pages. (32)

Theft; grievor alleged to have pilfered cigarettes—grievance dismissed. *Re M. Loeb (London) Limited and Teamsters, Chauffeurs, Warehousemen and Helpers Union, Local 141; Sniderham grievance*, January 21, 1980. Majority: McLaren, Filion—10 pages; dissent: Kobrynn—4 pages. (33)

Unsatisfactory work performance—grievor making substantially greater number of errors than other employees; grievance dismissed. *Re Bell Canada and Communications Workers of Canada; Brick grievance*, January 15, 1980. Majority: Springate, Healy—24 pages; dissent: Switzman. (34)

Unsatisfactory work performance—supervisor mistakenly believing that grievors were probationary employees; just cause not established: warning substituted. *Re Cambrian College and Ontario Public Service Employees Union; O'Neil and Gratton grievances*, January 25, 1980. H.D. Brown, Switzman, Gretton—17 pages. (35)

Unsatisfactory work performance; grievor adopting eccentric habits; grievance dismissed. *Re Canadian Imperial Bank of Commerce and Joseph Cassar (grievor)*, January 17, 1980. O'Shea—18 pages. (36)

Used marijuana during working hours—grievance dismissed. *Re Greb Industries Limited and United Shoe Workers of America, Local 308; Ali grievance*, January 2, 1980. Majority: Rayner, Murray—7 pages; dissent: Bruder. (37)

#### Discipline

Absence from work station—absence excessive; grievance dismissed. *Re Allen Industries Canada Limited and United Automobile Workers; Plesa grievance*, January 11, 1980. O'Shea—10 pages. (38)

Absence from work station—error of judgement; educational discipline more appropriate than punitive discipline; suspension reduced to warning. *Re Sydenham District Hospital and Ontario Nurses' Association; Blair grievance*, January 9, 1980. Majority: Shime, Angus—17 pages; dissent: Ronson—2 pages; addendum: Angus—1 page. (39)

Absence without permission; extended lunch—reduction of suspension from five days to two. *Re International Tools Division and Windsor Mouldmakers Union, Local 1680; Gagnier and Kirchoefer grievances*, January 11, 1980. Hinnegan—11 pages. (40)

Assault—grievor threatening foreman; grievance dismissed. *Re Rheem Canada Limited and United Steelworkers of America, Local 6868; Hunter grievance*, December 6, 1979. Majority: Rayner, Murray—11 pages; dissent: Fuller. (41)

Assault on fellow employee—three day suspension appropriate; grievance dismissed. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 414; Harron grievance*, December 31, 1979. H.D. Brown, Spaxman, White—13 pages. (42)

Careless work and horseplay resulting in excessive wastage—progressive discipline appropriate; three day suspension reduced to one day suspension. *Re William Neilson Limited and Canadian Food and Allied Workers; Rodie, Laurignano, Rocha and Holutiak grievances*, January 29, 1980.

Weatherill, Kyle, Healy—9 pages. (43)

Failure to report absence—change in work schedule requiring specific instructions; grievance allowed. *Re Metropolitan Toronto, Municipality of, and Canadian Union of Public Employees, Local 43; Magnolfi grievance*, January 4, 1980. Burkett, Tate, Perron—13 pages. (44)

Illegal work stoppage—confusion about instigators of sit-down amounted to discriminatory discipline; grievance allowed. *Re Dayton Tire Canada Limited and United Rubber Workers, Local 494; group grievance*, January 17, 1980. Majority: Rayner, Bruder—22 pages; dissent: Sanderson—3 pages. (45)\*

Insubordination—provocation as mitigating factor; shorter suspension substituted. *Re Borough of East York, Corporation of, and East York Fire Fighters Association, Local 418; Whyte grievance*, January 7, 1980. Verity—11 pages. (46)

Insubordination alleged—grievor's denial of offence not accepted; grievance dismissed. *Re Steel Company of Canada, Limited, and United Steelworkers of America, Local 1005; Smith grievance*, January 8, 1980. Majority: Kennedy, Morley—8 pages; dissent: Pudge—3 pages. (47)

Insubordination: refusal to follow supervisor's instructions—grievor finding assignment personally distasteful; grievance dismissed with qualification. *Re Metro Windsor-Essex County Health Unit and Ontario Nurses' Association; Dummer grievance*, January 9, 1980. Majority: Shime, Bartlet—12 pages; dissent: Herman. (48)

Insubordination—refusal to report to work upon notification of strike settlement—grievance dismissed. *Re Great Lakes Forest Products Limited and International Brotherhood of Electrical Workers, Local 1565; Miller, Rousseau grievances*, January 8, 1980. Majority: Blair, Holt—8 pages; dissent: Gareau—1 page. (49)

Restriction of output—grievor's explanation unsatisfactory; grievance dismissed. *Re Welland Forge Limited and United Electrical, Radio and Machine Workers of America, Local 523; Giovinazzo grievance*, January 30, 1980. Majority: Kennedy, McKillop—7 pages; dissent: Bosnich—1 page. (50)

Rudeness to customer—suspension modified; grievance allowed in part. *Re Air Canada and Canadian Air Line Employees' Association; Jackson grievance*, December 17, 1979. Shime—7 pages. (51)

Refusal to work on statutory holiday—illegal strike; one day suspension upheld but entitled to holiday pay. *Re Kendall Canada and United Steelworkers of America, Local 8505; group grievance*, January 23, 1980. Majority: Shime, Ronson—10 pages; dissent: Martin—2 pages. (52)

Sleeping on job—onus not met; grievance upheld *Re Cryovac Division, W.R. Grace & Co. of Canada Ltd. and Canadian Union of Operating Engineers, Local 101; Wakaruk grievance*, December 31, 1979. Majority: H.D. Brown, Harrison—15 pages; dissent: Grossman—5 pages. (53)

Suspension pending outcome of criminal charges—theft of property in custody of employer; charges dismissed; suspension unheld. *Re Canadian Pacific Air Lines Limited and International Association of Machinists and Aerospace Workers, Local 764; Percy grievance*. See (32), *supra*. (54)

Violation of safety procedure—overloading of freight elevator due to error in judgement; grievance dismissed. *Re Steel Company of Canada Limited, Hilton Works, and United Steelworkers of America, Local 1005; Fortunato grievance*, January 22, 1980. Majority: H.D. Brown, Murray—7 pages; dissent: Chertkoff—3 pages. (55)

Work performance—grievor's failure to work not culpable when due to physical inability; grievance allowed. *Re Sarnia, Corporation of the City of, Marshall Gowland Manor, and London and District Service Workers' Union, Local 220; Hindmarch grievance*, November 23, 1979. Palmer, Furlong, Switzman—7 pages. (56)

#### Evidence

Employment Standards officer's work sheets—documents not admissible as proof of their contents. *Re Harry Woods Transport Limited and Teamsters Union, Local 141; group grievance*, January 21, 1980. Weatherill, Kobryn, Brisbin—12 pages. (57)\*

Extrinsic evidence—latent ambiguity; extrinsic evidence appropriate. *Re Avis Transport of Canada Limited, Rent-A-Car Division, and Retail Clerks Union, Local 206; policy grievance*, December 17, 1979. Lunney—9 pages. (58)

#### Grievance Procedure

Policy grievance—union permitted to bring grievance where employee refuses if issue directly affects most employees; grievance arbitrable. *Re Scarborough Centenary Hospital Association and Ontario Nurses' Association; policy grievance*, December 31, 1979. Majority: H.D. Brown, Symes—11 pages; dissent: Shakes—1 page. (59)

Settlement alleged; lack of signature—settlement complete; grievance not arbitrable. *Re Bilt-Rite Upholstering Company Limited and Upholsterers' International Union of North America, Local 30; Tabnor grievance*, November 27, 1979. Rayner, More, Wilson—6 pages. (60)\*

Timeliness—delay and lack of diligence making extension of time limits inappropriate; grievance dismissed. *Re Snap-on Tools of Canada Limited and United Steelworkers of America, Local 5483; Cotterell grievance*, December 18, 1979. Majority: O'Shea, Sanderson—21 pages; dissent: Dixon—1 page. (61)

Union grievance respecting matter which individual involved did not grieve—union failing to establish that other persons affected by situation; grievance not arbitrable. *Re Algonquin College of Applied Arts and Technology and Ontario Public Service Employees Union; policy grievance*, January 14, 1980. Majority: Brandt, Hubert—16 pages; did not concur: Cochrane. (62)

#### Health and Safety

Safety shoes—employer discontinuing issue; whether "nature of task requires it"; grievance dismissed. *Re Decor Metal Products and United Automobile Workers, Local 1411; policy grievance*, January 8, 1980. Hinnegan—6 pages. (63)

Transfer of female employees from areas where danger of lead poisoning—not discriminatory; grievances dismissed. *Re General Motors of Canada Limited and United Automobile Workers, Local 222; Cowdell, Whalen, policy grievance*, December 5, 1979. Palmer—13 pages. (64)\*

#### Holiday Pay

Part-time and relief nurses excluded from "monetary benefits"—holiday not considered to be "monetary benefit" grievance allowed. *Re Ottawa West End Villa Limited and Ontario Nurses' Association; Waugh and Liston grievances*, January 17, 1980. Majority: Haladner, Done—12 pages; dissent: Brisbin—4 pages. (65)\*

Qualifying days—reasonable excuse for absence not established; grievance dismissed. *Re Cabot Carbon of Canada Ltd. and Oil, Chemical and Atomic Workers International Union, Local 9-14; Cleave grievance*, January 23, 1980. Majority: Dunn, McNaughton—4 pages; dissent: Healy—2 pages. (66)

#### Job Posting

Failure to set out all of the qualifications—reposting with proper qualifications ordered. *Re La Verendrye General Hospital and Canadian Union of Public Employees, Local 795*; December 14, 1979. Lunney, Holt, Simpson—6 pages. (67)

#### Lay-off

Bumping rights—procedure correctly applied; grievance dismissed. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union; Baker grievance*, January 11, 1980. Majority: P.C. Picher, White—10 pages; dissent: Spaxman—2 pages. (68)

Permanently classified employees given greater job security—more senior employees laid off in accordance with past practice; grievances dismissed. *Re Photo Engravers and Electrotypers Limited and Toronto Printing Pressmen and Assistants' Union, No. 10 (Paperhandlers)*. See (7), *supra*. (69)\*

Sub-contracting of work—lay-off proper; grievance dismissed. *Re Labourers' International Union of North America, Local 506, and Office and Professional Employees' International Union, Local 343; Repole grievance*, January 17, 1980. Majority: Rayner, Armstrong—8 pages; dissent: Brown. (70)

Temporary lay-off caused by confused production conditions and non-delivery of materials—temporary lay-off power not restricted to "Act of God" situations; grievance dismissed. *Re Philips Electronics Limited and Christian Labour Association of Canada; policy grievance*, January 14, 1980. Majority: Weatherill, Challis—11 pages; dissent: DeJong—4 pages. (71)

#### Overtime

Distribution—assignments may be made to any employee qualified to perform the work; grievance dismissed. *Re DeLaval Turbine Canada Limited and International Association of Bridge, Structural and Ornamental Iron Workers, Local 834; group grievance*, January 28, 1980. P.M. Draper—9 pages. (72)

Notification—one phone call sufficient; grievance dismissed. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 414; group grievance*, January 28, 1980. Majority: Burkett, Sargeant—13 pages; dissent: Spaxman—2 pages. (73)

Pyramiding; entitlement to both Sunday and daily overtime premiums under collective agreement—grievance dismissed. *Re Labatt's Limited and Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers, Local 304; Attard grievance*, January 14, 1980. Burkett—11 pages. (74)\*

#### Premium Pay

Premium rate when assigned to higher duty for more than one day—consecutive days required; grievance denied. *Re Oshawa Co-operative Supplies Limited and Retail, Wholesale and Department Store Union, Local 414; Patterson grievance*, January 15, 1980. Majority: Brent, Harding—3 pages; dissent: Dahmer—2 pages. (75)

Responsibility pay—payable to "Nurse in charge"; no entitlement for "Team Leader". *Re Huntsville District Memorial Hospital and Ontario Nurses' Association; group grievance*, January 10, 1980. Majority: Brunner, Whittaker—9 pages; dissent: Angus—1 page. (76)

Shift bonus—not applicable to overtime hours; grievance dismissed. *Re Gray Forgings and Stampings Limited and International Union of Electrical, Radio and Machine Workers, Local 557; Crossley grievance*, January 14, 1980. Majority: H.D. Brown, Glass—8 pages; dissent: Nicholson. (77)

Split day-off premium—work pattern not providing two consecutive days off; grievance allowed. *Re Steel Company of Canada Limited, Hilton Works, and United Steelworkers of America, Local 1005; group grievance*, November 29, 1979. Majority: Beck, Sharp—8 pages; dissent: Dunsmore—4 pages. (78)

#### Probationary Employee

Access to arbitration—collective agreement silent on ability to grieve discharge but standard provided; grievance arbitrable. *Re Bell Canada and Communications Workers of Canada; Colborne grievance*, January 8, 1980. P.C. Picher—12 pages. (79)\*

Transfer from outside bargaining unit—probationary period still applicable; grievance denied. *Re Welland, Corporation of City of, and Canadian Union of Public Employees, Local 1115; Vash grievance*, January 16, 1980. Majority: Dunn, Noble—6 pages; dissent: Bosnich—1 page. (80)

#### Procedure

Witnesses—Employment Standards officer not competent or compellable witness. *Re Harry Woods Transport Limited and Teamsters Union, Local 141; group grievance*, See (57), *supra*. (81)\*

#### Promotion

Procedure—internal procedure contrary to collective agreement; grievance allowed. *Re Carleton University and Carleton University Academic Staff Association; Marwah grievance*, January 11, 1980. Palmer—12 pages; submissions of counsel—40 pages. (82)

Qualifications—grievor not as qualified; grievance denied. *Re York University and York University Staff Association; Johnson grievance*, December 17, 1979. Majority: O'Shea, McDermott—23 pages; dissent: Bosnich—1 page. (83)

Qualifications—grievor not qualified; grievance dismissed. *Re Timmins, Corporation of City of, and Canadian Union of Public Employees, Local 210; Helmer grievance*, January 4, 1980. Dunn, DeGurse, Noble—5 pages. (84)

Qualifications; employer choosing best candidate instead of most senior one with required qualifications—grievor found to have required qualifications; grievance allowed. *Re St. Lawrence Home for the Aged and Canadian Union of Public Employees, Local 2107; Shire grievance*, January 21, 1980. Majority: Scott, Benest—9 pages; dissent: Chadwick—2 pages. (85)\*

**Recall**

Another employee allegedly doing grievor's work—other employee assigned job after developing compensable occupational disease; grievance dismissed. *Re McDonnell Douglas Aircraft Company of Canada Limited and United Automobile Workers, Local 1967; Taylor grievance*, January 4, 1980. Rayner—6 pages. (86)

Inventory work—brevity of lay-off making matter one of work scheduling; grievance dismissed. *Re Sunbeam Corporation (Canada) Limited and Federal Labour Union, No. 24762; Agius grievance*, December 10, 1979. Majority: Palmer, Heather—7 pages; dissent: Bezo—1 page. (87)

**Reporting Pay**

Call-in guarantee—operational practice enjoyed by company precluding receipt of benefit; grievance dismissed. *Re Hutton Transport Limited and Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 141; Walpole grievance*, December 6, 1979. Majority: J.L. Roberts, Carew—11 pages; dissent: Kobryn—1 page. (88)

Change in work schedule—company's obligation to notify grievor before start of shift; grievance allowed. *Re Reynolds Extrusion Company Limited and United Steelworkers of America, Local 8412; Mayne grievance*, December 22, 1979. Majority: O'Shea, Hart—10 pages; dissent: Winkler—2 pages. (89)

**Sabbatical Leave**

Appropriate standard of review—no bad faith; grievance dismissed. *Re Lambton County Board of Education and Ontario Secondary School Teachers' Federation; Peterson grievance*, January 21, 1980. Majority: Hinnegan, Riddell—16 pages; dissent: Knott—2 pages. (90)

**Scheduling of Work**

Change of schedule requiring grievor to work twelve days without day off—proper notice of change not given; grievance allowed. *Re Canadian National Telecommunications and Canadian Telecommunications Division, Canadian Brotherhood of Railway Transport and General Workers; Winton grievance*, January 21, 1980. Majority: Burkett, Switzman—17 pages; dissent: Dinsdale—5 pages. (91)

**Seniority**

Bumping rights—reduction of employees due to lack of work sufficient to give rise to bumping rights; grievance denied. *Re Somerville Belkin Industries Limited and Canadian Chemical Workers' Union, Local 30; Smithers grievance*, January 7, 1980. Majority: Carter, Morley—11 pages; dissent: Wohl—3 pages. (92)

Bumping rights—senior employee not qualified to do junior's work; grievance dismissed. *Re Stormont, Dundas & Glengarry County Board of Education and Ontario Secondary School Teachers' Federation, District 21; Studnicki grievance*, January 10, 1980. Majority: Dunn, Comrie—5 pages; dissent: Knott—2 pages. (93)

Part-time employees—part-time seniority not applicable to promotion within full-time stream; grievance denied. *Re City of Timmins Home for the Aged and Canadian Union of Public Employees, Local 1140; Courville grievance*, December 22, 1979. Majority: Dunn, Noble—3 pages; dissent: DeGurse. (94)

**Severance Pay**

Resignations because of impending shut-down of plant—waiver of collective agreement not proven; grievances dismissed. *Re Square D Company Canada Limited and United Electrical, Radio and Machine Workers of America, Local 505; Cloutier et al grievances*, January 10, 1980. Majority: Dunn, Werry—5 pages; dissent: Russell—1 page. (95)

**Sick Leave**

Status of employee on sick leave before commencement of strike—entitlement to benefits; grievance allowed. *Re Waterloo, Corporation of City of, and Waterloo Civic Employees Union, Local 1542; Wendling grievance*, December 28, 1979. Majority: O'Shea, Acton—13 pages; dissent: Sims—4 pages. (96)\*

**Transfer**

Qualifications—grievor not having necessary skill and ability; grievance dismissed. *Re Westinghouse Canada Limited and United Electrical, Radio and Machine Workers of America, Local 504; McKechnie grievance*, January 17, 1980. Majority: Brandt, Kacur—17 pages; dissent: Bosnich—7 pages. (97)

**Union Rights**

Super-seniority clause—union required to specify a particular job within a classification which grievor is claiming, not just any duties which grievor can perform; grievance dismissed. *Re Westinghouse Canada Limited and United Electrical, Radio and Machine Workers of America, Local 504; McKechnie grievance*. See (97), *supra*. (98)

**Vacations**

Entitlement—length of service to be calculated from date of commencement of full-time employment and not prior commencement of part-time employment; grievance dismissed. *Re Parkwood Hospital and London and District Building Service Workers Union, Local 220; Pillich grievance*, November 30, 1979. Majority: H.D. Brown, Heffernan—12 pages; dissent: Switzman—3 pages. (99)\*

Scheduling—employer entitled to choose employees to work during vacation shutdown without reference to seniority; grievance dismissed. *Re Fiberglas Canada Limited and Amalgamated Clothing and Textile Workers Union; Lahay grievance*, December 17, 1979. Rayner—7 pages. (100)

Scheduling—management discretion to limit the number of employees absent in any period; grievance dismissed. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 414; Keddy grievance*, January 7, 1980. Majority: Weatherill, White—8 pages; dissent: Dahmer—2 pages. (101)

**Wages**

Absence from work because of weather conditions—no entitlement to pay; grievance dismissed. *Re Durham County Board of Education and Ontario Secondary School Teachers' Federation, District 17, Edmunds grievance*, January 25, 1980. Majority: Curtis, Farrar—13 pages; dissent: Thiessen—3 pages. (102)

C.O.L.A. clause—adjustment not retroactive; grievance dismissed. *Re Irvin Industries Canada Limited and International Association of Machinists and Aerospace Workers; policy grievance*, December 28, 1979. Majority: Wakfer, Thomas—6 pages; dissent: Tate—3 pages. (103)

**Work Assignment**

Editorial functions assigned to supervisor—work managerial in nature; grievances dismissed. *Re Ottawa Citizen and Ottawa Newspaper Guild; Ashley, Walker, Swimmings grievances*, January 10, 1980. Majority: Adams, Sanderson—12 pages; dissent: Rupert—4 pages. (104)

The following awards in interest arbitrations under *The Hospital Labour Disputes Arbitration Act* were also filed with the Office of Arbitration during the month of January, 1980.

*Barton Place Nursing Home and Canadian Union of Public Employees*, O'Shea, Fagan, Filion—17 pages.

*Campbellford Memorial Hospital and Canadian Union of Public Employees and its Local Unions*, O'Connor, Lewis, Stewart—5 pages.

*Joseph Brant Memorial Hospital and International Union of Operating Engineers, Local 772*, O'Shea, Sullivan, Dixon—3 pages; addendum: Dixon—1 page.

*Leisure World Nursing Home and Ontario Nurses' Association*, Brent, Mayne—20 pages; dissent in part: Farrar—1 page.

*Manitoulin Centennial Manor and Canadian Union of Public Employees, Local 2165*, Linden, Buckland, Pharand—9 pages.

*Participating Hospitals (14 in number) and London and District Service Workers' Union, Local 220* (clarification of award), Adams, Filion, Switzman—4 pages.

*Peel Memorial Hospital and Ontario Nurses' Association*, H.D. Brown, Goudge, McGowan—7 pages.

*Stormont, Dundas & Glengarry, United Counties of (Glen Stor Dun Lodge) and Canadian Union of Public Employees, Local 1792*, Ord, Walsh—9 pages; dissent: Wilson—2 pages.

*Stormont, Dundas & Glengarry, United Counties of (Glen Stor Dun Lodge) and Ontario Nurses' Association, Ord*—10 pages; partial dissent: Walsh; dissent: Wilson—2 pages.

*Sudbury Memorial Hospital and Ontario Public Service Employees Union, Local 619*, Ord, Wren—10 pages; dissent in part; Buckland—4 pages.

*Sydenham District Hospital and Service Employees' Union, Local 210*, Kennedy, Lanigan—19 pages; dissent: Lewis—13 pages; addendum: Lanigan—2 pages; addendum: Kennedy—1 page.

*Wellesley Hospital and Ontario Nurses' Association, Local 94*, O'Shea, Goudge, Belford—14 pages.

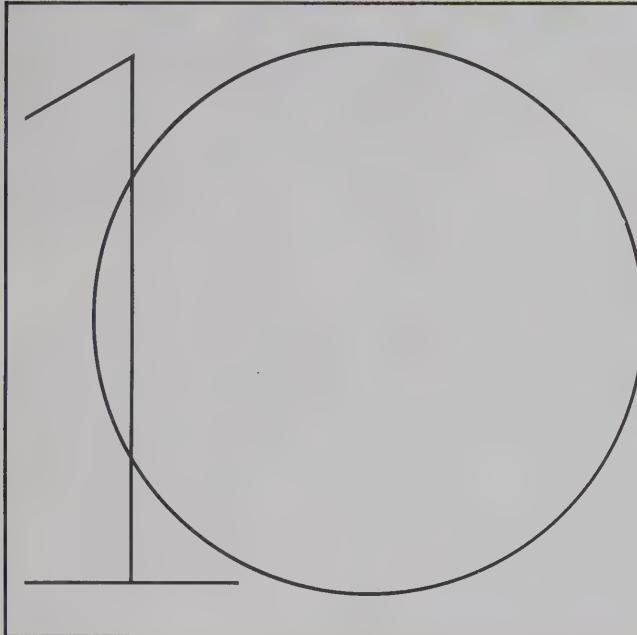
The awards may be seen at the Office of Arbitration, 400 University Avenue, 6th Floor, Toronto. Copies of awards may be obtained for a fee of 50 cents per page. Orders will be filled on receipt of an application and a cheque or money order payable to the Treasurer of Ontario for the applicable amount, which should be forwarded to: Cashier's Office, Ministry of Labour, 400 University Avenue, Toronto, Ontario, M7A 1T7.

**Filing Awards**

The attention of chairmen of boards of arbitration and sole arbitrators is drawn to the regulations under *The Labour Relations Act* which require every arbitrator to file a copy of his award with the Office of Arbitration within ten days of issuing such award.

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# Monthly Bulletin



## Office of Arbitration

Miss Jean M. Read, Director.



Ontario

**Ontario Ministry of Labour**  
400 University Avenue, 6th Floor  
Toronto, Ontario  
M7A 1T7  
Tel. (416) 965-5669

Hon. Robert Elgie, M.D., Minister  
T.E. Armstrong, QC, Deputy Minister

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Office of Arbitration as a service to  
persons involved in labour-management  
arbitrations.

### Appointment of Arbitrators

Forms for requests for appointment of arbitrator under Section 37a of *The Labour Relations Act* are available on request, from the Office of Arbitration.

### Change of Address and Telephone Numbers

The following changes should be noted, effective immediately:

Mr. Patrick Carriere, 3 Place Belle Rive, Suite 2112, Chomedey, Quebec, H7V 1B3; telephone (514) 688-6712.

Dr. A.P. Aggarwal; (807) 475-6146 or (807) 767-7259 (home).

### The Hospital Labour Disputes Arbitration Act

Under Ontario Regulation 258/80, filed April 1, 1980, maximum rate of remuneration for Chairmen and members of Boards of Arbitration, was increased as follows:

Chairmen of Boards of Arbitration —

- (a) \$275 a day where the time spent in a hearing or in executive session exceeds three hours;
- (b) \$137.50 where the time spent in a hearing or in executive session is three hours or less; and
- (c) \$34.35 an hour for the preparation of a decision or award not exceeding a total of \$275 a day.

Members of a Board of Arbitration —

- (a) \$150 a day where the time spent in a hearing or in executive session exceeds three hours;
- (b) \$75 where the time spent in a hearing or in executive session is three hours or less; and
- (c) \$18.75 an hour for the preparation of a decision or award not exceeding a total amount of \$150 a day.

The amount of necessary travelling and out-of-pocket expenses of a Chairman or members of a Board of Arbitration shall be allowed in accordance with the policy on Travel, Meal and Hospitality Expenses, established by Management Board of Cabinet.

**Awards**

The following awards were filed with the Office of Arbitration during the month of February, 1980.

The summary was prepared at the Faculty of Law, Queen's University, under the supervision of C.G. Simmons, B.A., B.C.L., LL.M., and D.D. Carter, B.A., B.C.L., LL.B.

\* Indicates award to be reported in full or in part in *Labour Arbitration Cases*.

† Indicates award issued under section 37a of *The Labour Relations Act*.

**Arbitrability**

Discharge of probationary employee—arbitrability expressly excluded by collective agreement; grievance dismissed. *Re Domtar Chemical Group and Canadian Chemical Workers' Union, Local 24; Gilchrist grievance*, February 8, 1980.

Majority: Kennedy, Byers—11 pages; dissent: McIlwain. (1)\*

**Bargaining Unit**

Elimination of bargaining unit—classification and creation of new job outside unit—new job having substantially the same work; grievance allowed. *Re Peterborough Civic Hospital and Ontario Nurses' Association, Local 66; union grievance*, December 12, 1979. Majority: Brunner, Herman—21 pages; dissent: Robinson—5 pages. (2)

"Supervisors"—no supervisory duties exercised, but community of interest not demonstrated; grievance dismissed. *Re Canon Inc. and International Moulders and Allied Workers Union, Local 41; union grievance*, January 20, 1980. Duchesneau-McLachlan—11 pages. (3)

**Bereavement Leave**

Extent of entitlement—limited to leave actually required for funeral attendance or observance; grievances dismissed. *Re Victoria Hospital Corporation and London and District Service Workers' Union, Local 220; employee grievances*, February 11, 1980. Majority: O'Shea, Billings—10 pages; dissent: Switzman. (4)

**Bereavement Pay**

Attendance at memorial mass not within provisions of collective agreement: company leading grievor to believe that leave available—company estopped from denying grievor pay; grievance allowed. *Re Alcan Canada Products Limited and United Steelworkers of America, Local 7193; Camus grievance*, January 30, 1980. Adams, Hart, Ronson—13 pages. (5)

**Board of Arbitration**

Jurisdiction to enforce earlier award—lack of jurisdiction; grievance denied. *Re FMC of Canada Limited and United Automobile Workers, Local 636; Clark grievance*, January 30, 1980. Majority: O'Shea, Gilfillan—9 pages; dissent: Blackburn—1 page. (6)\*

**Classification**

Changes in job content—minor changes; grievances dismissed. *Re Imperial Tobacco Division of Imasco Limited and Bakery, Confectionery and Tobacco Workers International Union, Local 323; union grievances*, January 29, 1980. Majority: Adams, Grossman—14 pages; dissent: Nelson. (7)

Creation of new classification—substantial change in job required; grievance dismissed. *Re Peterborough Civic Hospital and Ontario Nurses' Association, Local 66; union grievance*. See (2), *supra*. (8)

Higher classification sought—no job descriptions; grievance dismissed. *Re Alcan Canada Products Limited and United Steelworkers of America, Local 8754; O'Brien grievance*, February 8, 1980. Beck—10 pages. (9)

Lead hand claiming wage premium be paid at all times; only entitled when performing additional responsibilities; grievance dismissed. *Re Standard Tube Canada Limited and United Automobile Workers, Local 636; Kells grievance*, February 4, 1980. Schiff—7 pages. (10)

Seasonal job—not a separate classification; grievance dismissed. *Re Timmins, City of, and Canadian Union of Public Employees, Local 210; union grievance*, September 20, 1979. Majority: Dunn, Noble—4 pages; dissent: Farrell—2 pages. (11)

**Collective Agreement**

Retroactivity—overtime provisions not retroactive; grievance not arbitrable. *Re Lake Ontario Steel Co. Ltd. and United Steelworkers of America, Local 6571; union grievance*, February 14, 1980. Hinegan—4 pages. (12)

Retroactivity—provision for eleventh holiday having retroactive effect; grievance allowed *Re The Salvation Army Grace General Hospital (Ottawa) and Ontario Nurses' Association; union grievance*, February 15, 1980. Carter—12 pages. (13)\*†

**Contracting Out**

Restriction applying where capable of producing program—grievance allowed in part. *Re Canadian Broadcasting Corporation and National Association of Broadcast Employees and Technicians; policy grievance*, February 11, 1980. O'Shea—24 pages. (14)

**Cost of Living Allowance**

Calculation—past practice supporting use of quarterly average rather than single monthly figure; grievances dismissed. *Re Canadian Canners Limited and International Association of Machinists and Aerospace Workers, Local 863; Meyers et al grievances*, January 31, 1980. Majority: H.D. Brown, Wright—16 pages; dissent: Walsh—2 pages. (15)\*

Effect of lay-off and seniority—grievance allowed in part. *Re Peter-Austin Manufacturing Company and International Union of Doll and Toy Workers of the United States and Canada, Local 905; union grievance*, February 7, 1980. Majority: Dunn, Simon—5 pages; dissent: MacDonald—2 pages. (16)\*

Waiting period—not applying to second year of agreement; grievance allowed. *Re Aerofin Corporation (Canada) Ltd. and United Electrical, Radio and Machine Workers of America, Local 522; union grievance*, January 31, 1980. Majority: Simmons, Russell—7 pages; dissent: Hawkins. (17)\*

#### Damages

Assessment—no reduction for possible absenteeism. *Re Namasco Limited and United Automobile Workers of America, Local 195; Desjardins grievance*, November 22, 1979. Koskie—6 pages. (18)

Reinstatement following suspension during investigation of criminal charges—no jurisdiction to deal with compensation for earlier period. *Re The Great Atlantic and Pacific Company Limited and Retail, Wholesale and Department Store Union, Local 414; Greene grievance*, January 26, 1980. Interim award: H.D. Brown, Dinsdale—9 pages; dissent: Dahmer—3 pages. (19)\*

#### Demotion

Employer's right to reduce salary—full-time permanent teacher changed to part-time teacher—grievance dismissed. *Re The Haliburton County Board of Education and The Branch Affiliate of the Ontario Secondary School Teachers' Federation; Waller grievance*, January 21, 1980. Simmons—13 pages. (20)

Non-disciplinary demotion pending receipt of medical reports—accident caused by grievor's "blackout"; grievance allowed. *Re Hickeson-Langs Supply Company Limited and Teamsters Union, Local 419; Hughes grievance*, February 4, 1980. Majority: Curtis, Hurd—13 pages; dissent: Houck—2 pages. (21)

#### Discharge

Absence from work following vacation—grievor notified employer of illness: employer requiring satisfactory explanation also; grievance allowed. *Re The Fruehauf Trailer Company of Canada Limited and United Automobile Workers; Parente grievance*, December 18, 1979. Simmons—11 pages. (22)

Absence without leave—grievor failing to provide justifiable reasons for absence; grievance dismissed. *Re Rayco Stamping Products Limited and Christian Labour Association of Canada; Wilhelmer grievance*, February 19, 1980. O'Shea—14 pages. (23)

Absenteeism—company entitled to rely on grievor's written promise arising out of settlement of a previous agreement to maintain an average attendance level; grievance dismissed. *Re Dresser Industries Canada Limited, Industrial Products Division, Cambridge (Galt) Plant and United Steelworkers; Varga grievance*, February 13, 1980. O'Shea—17 pages. (24)

Absenteeism—grievor missing work due to compensable injury: likelihood of future return to regular employment; lay-off substituted. *Re General Tire Company Limited and United Rubber, Cork, Linoleum and Plastic Workers of America, Local 455; Varga grievance*, January 23, 1980. Rayner, Scott, Bosnich—7 pages. (25)

Assault upon foreman—suspension substituted with conditions. *Re Consumers Gas Company Limited and United Glass and Ceramic Workers of North America, Local 200; Samra grievance*, January 16, 1980. Majority: Brunner, Lenkinski—12 pages; dissent: Cancillia—3 pages. (26)

Careless workmanship—grievance dismissed. *Re Bulova Watch Company Limited and United Steelworkers of America; Nelson grievance*, February 13, 1980. O'Shea—13 pages. (27)

Culminating incident—continuous absenteeism: grievance dismissed. *Re Haley Industries Limited and United Steelworkers of America, Local 4820; Anderson grievance*, February 26, 1980. Majority: Hinnegan, Healy—7 pages; dissent: Taylor. (28)

Dishonesty; abuse of piece-work system alleged—grievance allowed in part. *Re Ritchie Rubinoff (Superior Men's Tailoring Co. Ltd.) and Amalgamated Clothing and Textile Workers Union; Tenuta grievance*, February 12, 1980. Arthurs—10 pages. (29)

Insubordination—employee dissatisfaction reflected in job attitude and performance; suspension substituted. *Re Consolidated Building Maintenance Services Limited and Canadian Union of Operating Engineers and General Workers, Local 101; anonymous grievance*, February 18, 1980. Majority: McCulloch, Creighton—23 pages; dissent in part: Harrison; addendum: Creighton—1 page; appendix—12 pages. (30)

Insubordination: refusal to wear hard hat for religious reasons—imposition of rule requiring hard hats reasonable, proper and not discriminatory; grievance dismissed. *Re Aclo Compounders Inc. and United Steelworkers of America; Mehmi grievance*, February 14, 1980. O'Shea—23 pages. (31)\*

Medical disability—onus on employer to find alternative position; grievance allowed. *Re City of Toronto, Corporation of, and Canadian Union of Public Employees, Local 43; Mayer grievance*, February 22, 1980. Majority: H.D. Brown, Tate—13 pages; dissent: Paulin—3 pages. (32)

Non-disciplinary discharge—ability of grievor to continue work curtailed; grievance dismissed. *Re Gates Rubber of Canada, Ltd. and United Rubber, Cork, Linoleum and Plastic Workers of America, Local 733; James Moore grievance*, February 1, 1980. Majority: Palmer, Storie—33 pages; dissent: Fettes. (33)

Non-disciplinary discharge—breach of 'Attendance Control Plan': prospective attendance record improvement canvassed; grievor reinstated with seniority but without compensation. *Re George White and Sons. Co. Limited and International Association of Machinists and Aerospace Workers, Local 2029; Deleary grievance*, January 22, 1980. McLaren, Bertuzzi, Carter—14 pages. (34)

Theft—company unable to substantiate allegation beyond suspension of impropriety; grievance allowed. *Re City Parking Holdings Limited and Service Employees Union, Local 204; Kontogiannopoulos grievance*; December 31, 1979. Majority: H.D. Brown, Wren—28 pages; dissent: Mitchnick—2 pages; addendum: H.D. Brown, Wren, Mitchnick—4 pages. (35)

Theft of company property—lesser penalty not appropriate; grievance dismissed. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 414; Carter grievance*, February 13, 1980. Majority: H.D. Brown, White—12 pages; dissent: Dahmer. (36)

Theft of employer's property—grievor aiding theft in ignorance: degree of involvement necessary; reinstatement with seniority but without compensation substituted. *Re Canadian International Paper Company and Canadian Paperworkers Union, Local 1872; Villiers grievance*, February 21, 1980. Weatherill—10 pages. (37)

Theft of employer's property—mitigating factors canvassed: reinstatement without compensation substituted. *Re Fiberglas Canada Limited and Amalgamated Clothing and Textile Workers Union, Local 1305 and 1929; Bunnaman grievance*, February 21, 1979. Brandt—19 pages. (38)

Termination for medical reasons—company's evidence not shaken; grievance dismissed. *Re Canadian Industries Limited and United Steelworkers of America, Local 13704; Friars grievance*, February 20, 1980. Majority: H.D. Brown, Morley—10 pages; dissent: Hurst—1 page. (39)

Unauthorized leave of absence alleged—employer and employee both to blame; grievance allowed in part. *Re Toronto Cloak Manufacturers' Association and International Ladies' Garment Workers' Union; Sun grievance*, February 14, 1980. Arthurs—7 pages. (40)

#### Discipline

Absenteeism—employer discharging burden of proving just cause to suspend; grievance dismissed. *Re The Windsor Roman Catholic Separate School Board and Service Employees Union, Local 210; Rollo grievance*, January 31, 1980. Majority: Ianni, Gress—11 pages; dissent: McConville—1 page. (41)

Absent without leave—grievor honestly believed he had permission and sickness justified absence; grievance allowed. *Re Alcan Canada Products Limited and United Steelworkers of America, Local 343; DeMille grievance*, February 4, 1980. Majority: O'Shea, Fitzpatrick—16 pages; dissent: Sanderson—2 pages. (42)

Breach of safety rules—discriminatory enforcement of the rules; grievance allowed. *Re Atikokan, Corporation of Township of, and Canadian Union of Public Employees, Local 752; Davidson grievance*, February 8, 1980. Aggarwal—20 pages. (43)

Carelessness—written warning appropriate for single act of carelessness; grievance dismissed. *Re The Steel Company of Canada, Limited, Hilton Works and United Steelworkers of America, Local 1005; Cruickshanks grievance*, January 30, 1980. Brent, Morley, Davis—7 pages. (44)

Careless workmanship—grievance dismissed. *Re Duplate Canada Limited and United Automobile Workers, Local 1661; Proulx and Lecompte grievance*, January 21, 1980. O'Shea—12 pages. (45)

Contact report filed after three allegedly preventable vehicular accidents in one month—grievance allowed. *Re Metropolitan Toronto, Municipality of, and Metropolitan Toronto Civic Employees' Union, Local 43; Brindle grievance*, January 31, 1980. Majority: Samuels, Tate—9 pages; addendum: Tate—1 page; dissent: Murray—1 page. (46)

Fraud—lack of authority to arrange sale and failure to account for funds: grievance dismissed. *Re Gendron Incorporated and United Steelworkers of America, Local 8072; Smith grievance*, February 11, 1980. O'Shea—10 pages. (47)

Insubordination—insubordinate conduct established; grievance denied. *Re Providence Villa and Providence Hospital and Canadian Union of Public Employees, Local 1590; Fountain grievance*, December 12, 1979. Majority: Springate, Levis—11 pages; dissent: Simon—2 pages. (48)

Insubordination: failure to report to foreman because of safety concern—grievor acting reasonably; grievance allowed. *Re DeLaval Turbine Canada Limited and Shopmen's Local Union No. 834 of International Association of Bridge, Structural and Ornamental Iron Workers; Jobitz grievance*, February 22, 1980. Dunn—5 pages. (49)

Insubordination—profane language directed at supervisor—challenge to authority and not shoptalk; grievance dismissed. *Re Steel Company of Canada Limited, Hilton Works, and United Steelworkers of America, Local 1005; Simpson grievance*, January 18, 1980. Majority: McLaren, Drmaj—12 pages; dissent: Sharp—2 pages. (50)

Insubordination—refusal to perform work believed to be unsafe—grievance dismissed. *Re Consolidated-Bathurst Packaging Limited and International Woodworkers of America, Local 2-76; Morrison grievance*, February 6, 1980. Majority: Hinnegan, Rogers—7 pages; dissent: Schachter—5 pages. (51)

Intimidation: insolent attitude—grievance dismissed. *Re Union Carbide Limited and United Electrical Workers of America, Local 523; Montgomery grievance*, December 13, 1979. Majority: Brent, Orsini—5 pages; dissent: Bosnich—1 page. (52)

Lateness—five day suspension not inappropriate; grievance dismissed. *Re Steel Company of Canada Ltd., Hilton Works, and United Steelworkers of America; Brown grievance*, January 30, 1980. Majority: Beatty, Murray—6 pages; dissent: Davis—1 page. (53)

Leaving work early—not established: grievances allowed. *Re Union Carbide Canada Limited, Metals and Carbon Division, and United Electrical, Radio and Machine Workers of America, Local 523; Kaczmarek, Paille, Clayton grievances* February 11, 1980. Majority: Welling, Bosnich—7 pages; dissent: Orsini—2 pages. (54)

Leaving work early without permission—grievance dismissed. *Re Armor Elevator Canada Limited and International Association of Machinists and Aerospace Workers, Local 2524; group grievance*, December 14, 1979. Majority: Barton, Churchill-Smith—9 pages; dissent: Wren—2 pages. (55)

Negligence—demotion appropriate; grievance dismissed. *Re Dubreuil Brothers Ltd. and Debrieul Brothers Employees Association; Joubert grievance*, February 15, 1980. Gorsky—8 pages. (56)

Negligence—grievor failing to properly supervise function of employees under him—period of demotion reduced. *Re City of Toronto and Canadian Union of Public Employees, Local 79; Gore grievance*, February 1, 1980. Brent, Lewis, Paulin—15 pages; addendum: Lewis—1 page. (57)

Unauthorized leave of absence: grievor failing to attend at work because he could not get a babysitter—grievance allowed in part. *Re Temiskaming Hospitals and Canadian Union of Public Employees, Local 904; Deveault grievance*, January 30, 1980. Majority: Linden, Buckland—15 pages; dissent: Belanger. (58)

#### Grievance Procedure

Timeliness—mandatory time limit extended pursuant to powers under 37(5a) of *The Labour Relations Act*; preliminary objection dismissed. *Re Metropolitan Toronto, Municipality of, and Canadian Union of Public Employees, Metropolitan Toronto Civic Employees Union, Local 43; union grievance*, January 17, 1980. Majority: Brunner, Tate—11 pages; dissent: Murray—2 pages. (59)

#### Holiday Pay

Qualifying day; grievor not working regular shift on the Friday before Monday holiday but working overtime shift on Saturday—qualifying days to be determined subjectively, not objectively; grievance allowed. *Re International Harvester Company of Canada Limited and United Automobile Workers of America, Local 398; Dent grievance*, February 1, 1980. O'Shea—13 pages. (60)

#### Hours of Work

Guarantee of hours of work—travel time not to be included in calculation of hours of work; grievance allowed. *Re The Boilermakers Contractors' Association and International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers; employees grievance*, December 20, 1979. Brunner, Eayrs, Kobryn—7 pages. (61)

#### Job Vacancy

Temporary absence not creating vacancy—grievance denied. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 414; policy grievance*, January 31, 1980. Majority: Brent, White—5 pages; dissent: Dahmer—2 pages. (62)

#### Lay-Off

Bumping-up—collective agreement silent; no inference to be drawn that employees with seniority, affected by lay-off, can bump-up; grievance dismissed. *Re Sudbury General Hospital of the Immaculate Conception and Canadian Union of Public Employees, Local 1023; union grievance*, January 31, 1980. Majority: H.D. Brown, Murray—9 pages; dissent: McVey. (63)

Reduced hours for some employees—lay-off occurring; grievance allowed. *Re Charlotte Eleanor Englehart Hospital and Service Employees' Union, Local 210; Johnston grievance*, January 29, 1980. Majority: Palmer, Byrne—11 pages; dissent: McNaughton—6 pages. (64)\*

#### Moving Expenses

Refusal to pay moving expenses following "voluntary" transfer—nature of employer's discretion; grievance dismissed. *Re The Provincial Schools Authority and The Federation of Provincial Schools Authority Teachers; Lapalme grievance*, January 30, 1980. MacDowell—20 pages. (65)\*

#### Overtime

Distribution—equalization to apply to entire department; grievances dismissed. *Re Standard Tube Canada Ltd. and United Automobile Workers, Local 636; Boleszczuk, Jonson grievances*, February 20, 1980. R.J. Roberts—8 pages. (66)

Entitlement dependent upon nature of work—characterization of different construction projects: grievance allowed in part. *Re Carman Construction Limited and United Steelworkers of America, Local 7727; union grievance*, February 14, 1980. O'Shea—14 pages. (67)

"In kind" remedy—appropriate in circumstances: grievance dismissed. *Re Canadian International Paper Company, Container Division—Burlington and Canadian Paperworkers Union, and its Affiliated Local 949; Davison grievance*, February 18, 1980. H.D. Brown—9 pages. (68)

**Premium Pay**

Call-in to secure plant—situation on emergency; grievance allowed. *Re Ex-Cell-O Corporation of Canada Limited and International Moulders and Allied Workers Union, Local 49; Lesouder grievance*, February 5, 1980. Shime—6 pages. (69)

Call-in to secure plant—situation on emergency; grievance allowed. *Re Ex-Cell-O Corporation of Canada Limited and International Moulders and Allied Workers, Local 49; Lesouder and Grove grievance*, February 5, 1980. Shime—3 pages. (70)

"Double time"—requiring only twice regular rate of pay; grievance dismissed. *Re Air Canada and Canadian Air Line Employees' Association; McKinnon grievance*, February 19, 1980. Shime—16 pages. (71)

**Probationary Employees**

Calculation of probationary period where full-time and part-time work—requirements pro-rated; grievance allowed. *Re Bestview Holdings Limited and Bestview Services Limited and Christian Labour Association of Canada; Dupee grievance*, February 22, 1980. Simmons—7 pages. (72)†

Discharge: grievor rated as "not suited for work"—proper exercise of managerial discretion; grievance dismissed. *Re TRW Canada Ltd. and Thompson Products Employees Association; Keast grievance*, February 27, 1980. Majority: Weatherill, Brady—13 pages; dissent: Tate—4 pages. (73)\*

**Procedure**

*Subpoena duces tecum*—requested subpoena too wide. *Re Bell Canada and Communications Workers of Canada; Colborne grievance*, February 19, 1980. Majority: P.C. Picher, Hersey—11 pages; dissent: Walsh. (74)\*

**Promotion**

Lead-hand job—designation of employee as lead-hand not constituting promotion; grievance dismissed. *Re DeLaval Turbine Canada Ltd. and International Association of Bridge, Structural and Ornamental Iron Workers, Shopmen's Local 834; union grievance*, January 30, 1980. Kennedy—8 pages. (75)

Qualifications—grievor less qualified; grievance dismissed. *Re Borough of York, Corporation of, and Canadian Union of Public Employees, Local 10; Fazio grievance*, February 4, 1980. Majority: Beatty, Paulin—13 pages; dissent: Fagan. (76)

Qualifications—grievor not entitled to be trained to do work; grievance dismissed. *Re Alexander Centre Industries Limited and United Steelworkers of America, Local 7842; Blais grievance*, January 29, 1980. Shime, Carriere, McNamara—8 pages. (77)

Qualifications—grievor not establishing qualifications for posted job: grievance dismissed. *Re Timmins, Corporation of City of, and Canadian Union of Public Employees, Local 210; Coe grievance*, January 31, 1980. Majority: Dunn, Noble—3 pages; dissent: Farrell. (78)

Qualifications—grievor not qualified to perform the posted job; grievance dismissed. *Re ITT Industries of Canada Limited and United Steelworkers of America, Local 6340; Raso grievance*, February 11, 1980. Weatherill—9 pages. (79)

Qualifications; letter of understanding stating that no academic qualifications required for job—employer not precluded from considering academic qualifications; grievance dismissed. *Re Kitchener, Corporation of City of, and Kitchener Civic Employees' Union, Local 68 of Canadian Union of Public Employees; Scott grievance*, February 15, 1980. Majority: Rayner, Sims—7 pages; dissent: Maddison. (80)

Qualifications—weight of seniority in relation to maintaining efficient work force; past practice considered: grievance dismissed. *Re Genstar Chemical Limited and Canadian Chemical Workers Union, Local 33; Cools grievance*, January 31, 1980. Majority: Palmer, McGee—10 pages; dissent: Pratt—5 pages. (81)

Temporary position—not a promotion; grievance dismissed. *Re Timmins, Corporation of City of, and Canadian Union of Public Employees, Local 210; Zega grievance*, February 1, 1980. Majority: Dunn, Noble—3 pages; dissent: Farrell—3 pages. (82)

**Recall**

Seasonal employee—only regular employees put on seniority list; grievance dismissed. *Re G.B.Wonder Bakeries (Division of General Bakeries Limited) and Retail, Wholesale, Bakery and Confectionery Workers Union, Local 461; Joudrey grievance*, February 22, 1980. H.D. Brown—8 pages. (83)

**Scheduling of Work**

Employer altering scheduled hours—collective agreement specifies agreed upon hours; grievance upheld. *Re Ex-Cell-O Corporation of Canada Limited and International Moulders and Allied Workers Union, Local 49, policy grievance*, February 5, 1980. Shime—8 pages. (84)

Reduction of hours because of decrease in business; grievor reduced from full-time to part-time; grievance dismissed. *Re Canada Safeway Limited and Retail Clerks Union, Local 206; Meister grievance*, February 21, 1980. Kennedy, Strickland, Sanderson—10 pages. (85)

**Seniority**

Accumulation—according to length of service with the employer, not length of service within bargaining unit; grievances denied. *Re Hamilton Harbour Commissioners and Canadian Union of Public Employees, Local 958; Haddock, Breckon and Whyte grievances*, January 31, 1980. Majority: Simmons, Wace—14 pages; dissent: Greenaway. (86)

Bumping rights—no right to choose job; grievance dismissed. *Re Nipissing Board of Education and Canadian Union of Public Employees, Local 1165; Fergusson grievance*, January 29, 1980. Lunney—13 pages. (87)

Lateral transfer—seniority not applicable; grievance dismissed. *Re Polyresines and United Steelworkers of America, Local 4010; Kelloway grievance*, February 22, 1980.

Majority: Kennedy, Denson—8 pages; dissent: Rao. (88)

Loss of seniority for leave of absence for purposes other than those for which leave granted—not necessary for employer to prove *mens rea* or fraudulent intent; grievance dismissed. *Re Temiskaming Hospitals and Canadian Union of Public Employees, Local 904; Deveault grievance*, January 31, 1980. Majority: Linden, Buckland—10 pages; dissent: Belanger. (89)

Loss of seniority where absent without notification for three days—loss of seniority upheld. *Re FCM Division, Gulf + Western (Canada) Limited and United Automobile Workers, Local 195; Little grievance*, January 30, 1980. Linden—12 pages. (90)

**Sick Leave**

Accumulation during illness—evidence of past practice not allowed; grievance allowed. *Re Religious Hospitallers of St. Joseph of Villa Maria and Service Employees International Union, Local 210; union grievance*, December 18, 1979. H.D. Brown, Burnell, McConville—16 pages. (91)\*

**Sick Pay**

Proof of illness—employer can require proof if there are reasonable grounds for doubting sickness; grievance dismissed. *Re Salvation Army Grace Hospital and Canadian Union of Operating Engineers and General Workers, Local 100; Palombo grievance*, February 6, 1980. McLaren—12 pages. (92)\*

**Transfer**

Failure to meet operating room standards—grievance upheld, grievor to be offered additional orientation. *Re Belleville General Hospital and Ontario Nurses' Association; Ahoofa grievance*, December 21, 1979. Majority: Simmons, Switzman—21 pages; addendum: Switzman—2 pages; dissent: Lynch—3 pages. (93)

Right to return to former job—management having unqualified right to transfer; grievance denied. *Re John Forsyth Company Ltd. and Western Ontario Joint Board, Amalgamated Clothing and Textile Workers Union, Local 303B; Thring grievance*, February 5, 1980. Hinnegan—6 pages. (94)

**Travel Allowance**

Transfer to new job site although closer to home—grievance allowed. *Re Bell Canada and Communications Workers of Canada; Arthur grievance*, February 14, 1980. Majority: P.C. Picher, Switzman—20 pages; dissent: Healy—1 page. (95)

**Union Rights**

Leave of absence with pay—canvassing other workers for charitable donations considered as union business; grievance allowed. *Re London, Ontario, Corporation of City of, and London Civic Employees Union, Local 107; policy grievance*, February 26, 1980. R.J. Roberts, Miners, Pennesi—7 pages. (96)

Super-seniority—provision permitting bumping up; grievance allowed. *Re Firestone Canada Incorporated and United Rubber, Cork, Linoleum and Plastic Workers of America, Local 743; Bristow grievance*, February 27, 1980. Majority: Brent, Bruder—9 pages; dissent: Kort—2 pages. (97)\*

Time off for union business—union's request reasonable; grievance allowed. *Re Timmins, Corporation of City of, and Canadian Union of Public Employees, Local 210; Major et al grievance*, September 21, 1979. Dunn, Farrell, Noble—6 pages. (98)

**Vacations**

Part-time employee becoming full-time employee—"service" calculated from commencement of full-time employment; grievance dismissed. *Re Stelco Employees' (Primary Works) Credit Union Limited and Office and Professional Employees International Union, Local 343; Gross grievance*, February 25, 1980. Majority: McLaren, Reistetter—15 pages; dissent: Brown—3 pages. (99)

**Wages**

Inflated job evaluation—treatment as "special case": entitlement to "add on" pay on same terms as other classifications; grievance dismissed. *Re Haley Industries Limited and United Steelworkers of America, Local 4820; policy grievance*, January 29, 1980. Majority: Shime, Healy—10, pages; dissent: Jones. (100)

Qualification supplement—employees employed less than five years not entitled; grievance dismissed. *Re Metropolitan Toronto Police Association and Metropolitan Board of Commissioners of Police; union grievance*, January 31, 1980. Burkett—12 pages. (101)

**Welfare Plans**

Health insurance—entitlement to have premium payments made on their behalf of persons who work less than an entire month; grievance upheld. *Re Decor Metal Products and United Automobile Workers, Local 1411; policy grievance*, February 11, 1980. Weatherill—8 pages. (102)

Payment of premiums required during statutory freeze—grievance upheld. *Re Donnys Meat Market and Canadian Food and Allied Workers, Local 633; union grievance*, January 25, 1980. Majority: Weatherill, Simon—5 pages; dissent: Robinson—2 pages. (103)

**Work Assignment**

Temporary assignment—not a violation of collective agreement; grievance dismissed. *Re Air Canada and Canadian Air Line Employees' Association; union grievance*, February 19, 1980. Shime—14 pages. (104)

*Extendicare Limited (London, St. Catharines, Sudbury, Ottawa), Bestview Holdings Limited (Toronto, St. Catharines), Central Park Lodge (Kitchener)*, Rose, Perkins—16 pages; dissent: Goudge.

*Kincardine District General Hospital and Ontario Nurses' Association (full-time and part-time nurses)*, Brunner, Dixon, Goudge—14 pages; addendum: Goudge—1 page.

*Mount Sinai Hospital and Service Employees Union, Local 204 (office and clerical employees)*, Samuels, Wren—28 pages; dissent: Hubert—3 pages.

*Sisters of St. Joseph of the Diocese of London and Service Employees' Union, Local 210 (lay-office and clerical employees at Chatham)*, Verity—22 pages; partial dissent: Farrar—2 pages; addendum dissent: Lewis—1 page.

*Sisters of St. Joseph of the Diocese of London and Service Employees' Union, Local 210*, Verity, Farrar—19 pages; addendum: Farrar—1 page; dissent: Lewis—10 pages.

*Scarborough Centenary Hospital and Ontario Nurses' Association*, Baum, Shakes, Angus—13 pages.

The following awards in interest arbitrations under *The Hospital Labour Disputes Arbitration Act* were also filed with the Office of Arbitration during the month of February, 1980.

*Barnes Rest Home and Service Employees Union, Local 210* (interim award), Rose, Lewis—11 pages; dissent: Bartlet—6 pages.

*Belleville General Hospital and Service Employees Union, Local 663 (office and clerical staff)*, Kennedy, Pike, Edge—9 pages.

*Brantwood Manor Nursing Home Limited and Ontario Nurses' Association*, McCulloch, Walsh—13 pages; dissent in part: Spear—7 pages.

*Chelsey Park Corporation, Streetsville, and Service Employees Union, Local 204*, Teplitsky, Grossman, Wren—6 pages.

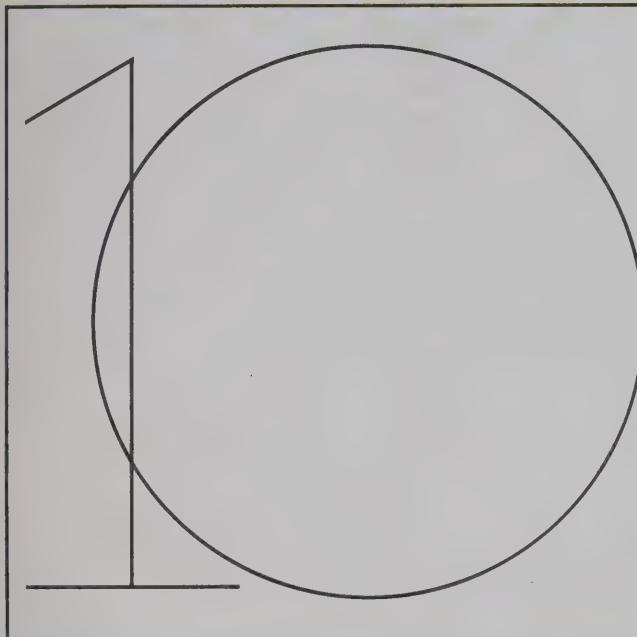
The awards may be seen at the Office of Arbitration, 400 University Avenue, 6th Floor, Toronto. Copies of awards may be obtained for a fee of 50 cents per page. Orders will be filled on receipt of an application and a cheque or money order payable to the Treasurer of Ontario for the applicable amount, which should be forwarded to: Cashier's Office, Ministry of Labour, 400 University Avenue, Toronto, Ontario, M7A 1T7.

**Filing Awards**

The attention of chairmen of boards of arbitration and sole arbitrators is drawn to the regulations under *The Labour Relations Act* which require every arbitrator to file a copy of his award with the Office of Arbitration within ten days of issuing such award.

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# Monthly Bulletin



## Office of Arbitration



Miss Jean M. Read, Director.

Ontario Ministry of Labour  
400 University Avenue, 6th Floor  
Toronto, Ontario  
M7A 1T7

Tel. (416) 965-5669

Hon. Robert Elgie, M.D., Minister  
T.E. Armstrong, QC, Deputy Minister

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## In Memoriam

It is with regret that this Office has learned of the death, in May, 1980, of one of its approved arbitrators, Donald W. Rose, Q.C. He will be missed from the ranks of arbitrators.

## Appointment of Arbitrators

Forms for requests for appointment of arbitrator under Section 37a of *The Labour Relations Act* are available on request, from the Office of Arbitration.

## Awards

The following awards were filed with the Office of Arbitration during the month of March, 1980.

The summary was prepared at the Faculty of Law, Queen's University, under the supervision of C.G. Simmons, B.A., B.C.L., LL.M., and D.D. Carter, B.A., B.C.L., LL.B.

\* Indicates award to be reported in full or in part in *Labour Arbitration Cases*.

† Indicates award issued under section 37a of *The Labour Relations Act*.

## Arbitrability

"Casual employee"—casual employees excluded from rights and benefits provided in collective agreement; grievance not arbitrable. *Re City of Toronto, Corporation of, and Metropolitan Toronto Civic Employees Union, Local 43; Pawlow grievance*, March 3, 1980. Majority: Brunner, Paulin—8 pages; dissent: Tate—2 pages. (1)

Dispute as to whether documents constituting collective agreement—no grievance beyond preliminary issue; grievance not arbitrable under s. 37a. *Re Fortune Footwear Division of Susan Shoe Industries Limited and United Textile Workers of America, Local 369; union grievance*, March 26, 1980. Gorsky—6 pages. (2)\*†

Entitlement to statutory overtime pay independent of collective agreement; grievance not arbitrable. *Re American Can of Canada Limited and Sheet Metal Workers' International Association, Local 487; Sykes grievance*, March 24, 1980. Beatty, Lewis, Herlihy—11 pages; addendum: Lewis—3 pages. (3)

Failure to deliver a completed copy of §. 37a "request for appointment of arbitrator" alleged—no evidence adduced that completed copy not delivered; preliminary objection dismissed. *Re Hamilton Civic Hospitals and Canadian Union of Public Employees, Local 794; union policy grievance*, March 21, 1980. Simmons—19 pages. (4)\*†

Harrassment of grievor by supervisor alleged—no evidence to justify grievance. *Re Parking Authority of Toronto and Metropolitan Toronto Civic Employees' Union, Local 43, Canadian Union of Public Employees; employee grievance*, No. PA-79-2, March 10, 1980. Weatherill, Tate, Winkler—5 pages. (5)

Policy grievance brought—group grievance not appropriate when some of those affected are no longer employees; collective agreement not expressly precluding filing of a group grievance to the exclusion of a policy grievance; preliminary objection dismissed. *Re Hamilton Civic Hospitals and Canadian Union of Public Employees, Local 794; union policy grievance*. See (4), *supra*. (6)\*†

Prior interest arbitration—meaning of first arbitrator's award not in issue; present arbitrator having jurisdiction. *Re Hamilton Civic Hospitals and Canadian Union of Public Employees, Local 794; union policy grievance*. See (4), *supra*. (7)\*†

#### Bargaining Unit

Merger of businesses—accretion to existing bargaining unit; grievance allowed. *Re General Bakeries Limited and Retail, Wholesale, Bakery and Confectionery Workers' Union, Local 461; policy grievance*, March 3, 1980. Majority: Shime, Spaxman—10 pages; dissent: McGowan—2 pages. (8)

New classifications—onus on union to establish that classifications fall within scope of existing bargaining unit; grievance upheld in part. *Re Canron Inc., Pipe Division, Cherry Street Unit, and Office and Clerical Workers Local 30, International Moulders and Allied Workers; policy grievance*, March 5, 1980. H.D. Brown—16 pages. (9)

New position—analogous to position falling within bargaining unit; grievance allowed. *Re United Press International of Canada Ltd. and Canadian Wire Service Guild, Local 213; Fortune grievance*, March 14, 1980. Linden—5 pages. (10)

Summer students not expressly covered by collective agreement—grievor having no access to collective agreement; grievance dismissed. *Re Little's Nursing Home (Tecumseh) Limited and Service Employees Union, Local 210; Mailloux grievance*, July 15, 1979. Majority: Stewart, Docherty—8 pages; did not concur: McConville (11)

#### Classification

Changes in job description—previous parity with other unit position no longer justified; grievance dismissed. *Re Ontario New Democratic Caucus and Office and Professional Employees International Union, Local 343; policy grievance*, March 25, 1980. Devlin—11 pages. (12)

Pay rate schedule attached to collective agreement not creating independent job classifications; grievance dismissed. *Re Shell Canada Limited and Oil, Chemical and Atomic Workers' International Union, Local 9-839; policy grievance*, February 19, 1980. Majority: Brunner, Churchill-Smith—10 pages; dissent: Edwards—2 pages. (13)

#### Collective Agreement

Conflict between probationary contract and terms of collective agreement; terms of agreement prevail; grievance arbitrable. *Re Stormont, Dundas and Glengarry County Roman Catholic Separate School Board and Ontario English Catholic Teachers' Association; Latour grievance*, March 31, 1980. Majority: Brunner, McLean—18 pages; dissent: Sirois—8 pages. (14)\*

#### Contracting Out

Consent of union required—agreement revoked; grievance allowed. *Re Canadian Clothiers, Dylex Limited, and Men's Clothing Manufacturers Association of Ontario and Toronto Joint Board, Amalgamated Clothing and Textile Workers Union; union grievance*, March, 1980. Arthurs—37 pages. (15)

Laches; failure to pursue earlier grievance—grievance dismissed. *Re Toronto Dress and Sportswear Manufacturers' Guild Inc. and International Ladies Garment Workers' Union, Locals 72-192-199; union grievance*, March 14, 1980. Teplitsky—10 pages. (16)\*

#### Damages

Interest—employees not entitled to be paid interest for the time when payment was overdue; delay was due to computer problems and was not unreasonable; grievance dismissed. *Re Hamilton Civic Hospitals and Canadian Union of Public Employees, Local 794; union policy grievance*. See (4), *supra*. (17)\*†

#### Demotion

Non-disciplinary demotion—inability to perform work; factors employer must establish; grievance denied. *Re Canadian National Telecommunications and Canadian Brotherhood of Railway, Transport and General Workers; Johnson grievance*, March 24, 1980. Majority: Burkett, Dinsdale—18 pages; dissent: Walsh. (18)

#### Discharge

Absent from work-place without permission—grievor in breach of company rules; suspension substituted. *Re Canadian Johns Manville Company Limited and Canadian Chemical Workers Union, Local 26; Hughson grievance*, March 6, 1980. Majority: Shime, Wakely—21 pages; addendum: Shime—2 pages; addendum: Wakely—1 page; dissent: Wohl—4 pages. (19)

Absent from work-place without permission—grievor's lengthy disciplinary record and employer's failure to properly administer progressive discipline considered; grievance dismissed with conditions. *Re Canadian Johns Manville Company Limited and Canadian Chemical Workers Union, Local 26; Barnes grievance*. See (19), *supra*. (20)

Absent without leave—grievor's absence provoked by employer's arbitrary cancellation of vacation privilege; suspension substituted. *Re Boulevard Inn and International Beverage Dispensers' and Bartenders' Union, Local 280; anonymous grievance*, February 14, 1980. Teplitsky, Fagan, Gatien—4 pages. (21)

Absent without notification—discharge too severe under circumstances; grievance allowed in part. *Re University Hospital and London and District Service Workers' Union, Local 220; Robinson grievance*, March 20, 1980. Majority: R.J. Roberts, Switzman—14 pages; addendum: Switzman—2 pages; dissent: White—2 pages. (22)

Absenteeism due to illness—collective agreement provides only for loss of seniority rights; just cause for discharge must be shown; grievance allowed. *Re Salvation Army Grace Hospital and Service Employees Union, Local 210; Brown grievance*, February 28, 1980. Majority: Brunner, Lewis—16 pages; dissent: Burnell—6 pages. (23)\*

Absenteeism excessive—evidence of likelihood of regular attendance in future; grievance allowed with conditions. *Re Cornwall, Corporation of City of, and Canadian Union of Public Employees, Local 234; St. Louis grievance*, January 31, 1980. Roach, Drouin, Whittaker—9 pages. (24)

Absenteeism excessive—reinstatement on terms. *Re George W. Endress Company Limited and Amalgamated Clothing and Textile Workers Union; Carter grievance*, March 18, 1980. McLaren, Hainsworth, Heather—13 pages. (25)

Absenteeism—grievor claimed resolution of drug addiction; evidence of injuries interfering with regular attendance; grievance denied. *Re Massey Ferguson Industries Limited and United Automobile Workers, Local 439; McGee grievance*, March 12, 1980. Simmons—11 pages. (26)

Absenteeism—innocent but excessive: likelihood of recurrence low; reinstatement with seniority and compensation. *Re Canadian Timken Limited and United Steelworkers of America, Local 4906; Jordan grievance*, March 14, 1980. Brandt—10 pages. (27)

Altercation with customer—incident less serious than alleged; suspension substituted. *Re Cara Operations Limited and Hotel and Club Employees' Union, Local 299, and Hotel and Restaurant Employees' and Bartenders' International Union; Brown grievance*, March 17, 1980. Majority: Brent, Tate—12 pages; dissent: Werry—3 pages. (28)

Assault upon foreman—Fleming grievance denied; Baptiste grievance allowed in part. *Re Byron Jackson Division, Borg-Warner (Canada) Limited and International Association of Machinists and Aerospace Workers Lodge 235; Baptiste, Fleming grievances*, January 23, 1980. Majority: Ord, Drmaj—20 pages; addendum: Drmaj—7 pages; dissent: Tate—4 pages. (29)

Assault upon independent contractor; grievor threatening with knife—grievance denied. *Re Continuous Colour Coat Limited and United Steelworkers of America, Local 7685; Francis grievance*, February 25, 1980. Delisle—6 pages. (30)

Association with marijuana-smoking customer—reinstatement with full compensation; grievance allowed. *Re Ronscott Inc., Proprietors, Waverley Hotel, and Hotel, Motel and Restaurant Employees' and Beverage Dispensers' Union, Local 757; Howard grievance*, February 25, 1980. Bicknell, Erickson, Stencer—5 pages. (31)

Culminating incident—assault and disorderly conduct alleged: relevance of type of conduct assessed; reinstatement with seniority but without compensation substituted. *Re Fruehauf Canada Incorporated and United Automobile Workers, Local 252; Strachan grievance*, February 18, 1980. Rayner—12 pages. (32)

Destruction of employer's property resulting from emotional outburst—grievance dismissed. *Re Ford Motor Company of Canada Limited and United Automobile Workers, Local 1520; Nastasi grievance*, March 4, 1980. Palmer—9 pages. (33)

Falsifying application form—misleading information not given intentionally; grievance allowed. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 414; Williams grievance*, March 3, 1980. Majority: Hinnegan, Spaxman—11 pages; dissent: White. (34)

Innocent absenteeism—grievance upheld conditional upon reasonably satisfactory attendance for six months. *Re Burndy Canada Limited and International Association of Machinists and Aerospace Workers Local Lodge 2546; Cassisi grievance*, February 19, 1980. Brunner, Walsh, Affleck—7 pages. (35)

Insubordination—grievor's intoxicated state and belligerent attitude constituted serious misconduct; grievance dismissed. *Re Alcan Canada Products Limited and United Steelworkers of America, Local 343; Todd grievance*, March 13, 1980. Majority: O'Shea, Sanderson—12 pages; dissent in part: Wareham—2 pages. (36)

Insubordination; mitigating circumstances; discharge not appropriate; suspension substituted. *Re Pyrotenax of Canada Limited and International Union of Electrical, Radio and Machine Workers; Stone grievance*, February 15, 1980. Teplitsky, McGowan, Knipfel—5 pages. (37)

Insubordination—policy of progressive discipline not established; discharge reduced to four month suspension. *Re Parking Authority of Toronto and Metropolitan Toronto Civic Employees' Union, Local 43, Canadian Union of Public Employees; employee grievance No. PA-79-3*, March 10, 1980. Majority: Weatherill, Tate—12 pages; dissent: Winkler—2 pages. (38)

Insubordination: refusal to work Friday evenings because of religious convictions: employer's requirements *bona fide* and not discriminatory; complaint dismissed. *Re Bank of Montreal and Scott Wheeler*; March 10, 1980. H.D. Brown—23 pages. (Adjudication under section 61.5 of Canada Labour Code) (39)\*

Loss of seniority causing reversion to probationary status—loss of right to grieve; grievance denied. *Re Continental Group of Canada Limited and Canadian Paperworkers Union, Local 496; Cormack grievance*, February 25, 1980. Majority: H.D. Brown, Riggs—17 pages; dissent: Dollack—2 pages. (40)

Theft—past similar acts and warnings; grievance dismissed. *Re West Nipissing General Hospital and Canadian Union of Public Employees, Local 1101; Delorme grievance*, March 14, 1980. Majority: Lunney, Paulin—9 pages; dissent: Belanger—1 page. (41)

Unco-operative and disruptive employee—earlier complaints and incidents not acted upon; grievance allowed. *Re Metropolitan Toronto Library Board and Canadian Union of Public Employees, Local 1582; Paterson grievance*, March 31, 1980. Majority: Dunn, Land—9 pages; dissent: Noble—4 pages. (42)

Violation of liquor licensing statute alleged—allegations not substantiated; grievance dismissed. *Re 401548 Ontario Limited and Retail, Wholesale and Department Store Union, Local 448; Cail grievance*, March 24, 1980. Gorsky—14 pages. (43)

Violation of liquor licensing statute alleged; suspension substituted. *Re 401548 Ontario Limited and Retail, Wholesale and Department Store Union, Local 448; Harris grievance*, March 24, 1980. Gorsky—14 pages. (44)

#### Discipline

Damage to company property wilful—ten day suspension justified; grievance dismissed. *Re The Steel Company of Canada Ltd. and United Steelworkers of America, Local 1005; Zawislak grievance*, March 3, 1980. Majority: H.D. Brown, Baker—11 pages; dissent: Davis. (45)

Failure to report for work—company fulfilled responsibility by posting the schedule in prominent place accessible to employees; absence of grievor unjustified; three day suspension appropriate; grievance dismissed. *Re The Steel Company of Canada Ltd. and United Steelworkers of America, Local 1005; Fritsch grievance*, March 27, 1980. Majority: Brent, Drmaj—11 pages; dissent: Lampert—3 pages. (46)

Illegal strike—most grievors participating in culpable manner; one grievor only encouraging return to work; one grievance allowed; remainder dismissed. *Re Abex Industries Limited and International Chemical Workers of America, Local 175; Bartlett et al grievances*, March 20, 1980. Majority: Rayner, Bernardo—11 pages; dissent: Everson; addendum: Bernardo—1 page. (47)

Inattention to work alleged—grievor's explanation corroborated and accepted; grievance allowed. *Re Air Canada and Canadian Air Line Employees' Association; Kelly grievance*, March 5, 1980. Simmons—8 pages. (48)

Inflated time sheet—five day suspension excessive under circumstances; grievance allowed. *Re Storval International Inc. and United Steelworkers of America, Local 3257; Beaupre grievance*, March 14, 1980. Majority: O'Shea, Beaudry—17 pages; dissent: Saxe—4 pages. (49)

Insubordination—grievor alleged danger and inability to perform task: onus on grievor; grievance dismissed. *Re Steel Company of Canada Limited, Hilton Works, and United Steelworkers of America, Local 1005; Clement grievance*, March 21, 1980. Majority: Palmer, Brady—18 pages; dissent: Chertkoff—4 pages. (50)

Insubordination—grievor failing to comply with a direct order; grievance dismissed. *Re Dubois Chemicals of Canada Limited and Labourers' International Union of North America, Local 183; Smith grievance*, February 4, 1980. Majority: Egan, Wakely—5 pages; dissent: Hitchen—3 pages. (51)

Intoxication upon reporting to work—grievor's denial not accepted; grievance dismissed. *Re Air Canada and International Association of Machinists; unnamed grievor*, March 3, 1980. Shime—10 pages. (52)

Lateness—collective agreement provided only for docking of pay; suspension improper. *Re Consolidated Aviation Fueling of Toronto and International Association of Machinists and Aerospace Workers, Local 2413; Sperduto grievance*, February 29, 1980. Rubenstein—10 pages. (53)

Leaving job site—employee under duty to at least notify someone of his whereabouts; grievance dismissed. *Re Steel Company of Canada Limited, Hilton Works, and United Steelworkers of America, Local 1005; Knight and Turcotte grievance*, March 3, 1980. Majority: R.J. Roberts, Gray—7 pages; dissent: Spears—1 page. (54)

Leaving production area early—failure to uniformly enforce company rule; grievance dismissed. *Re Dupont of Canada Limited and Kingston Independent Nylon Workers Union; Sudak grievance*, February 27, 1980. Majority: O'Shea, Binning—21 pages; dissent: Cavalluzzo—3 pages. (55)

Negligence—careless performance of work assignments; suspension reduced. *Re Aro Canada Incorporated and International Association of Machinists and Aerospace Workers; Nelson grievance*, March 27, 1980. Kennedy—6 pages. (56)

Obscene language directed at foreman—grievance dismissed. *Re Steel Company of Canada Limited and United Steelworkers of America, Local 1005; Franze grievance*, February 15, 1980. Majority: Brent, Baker—9 pages; dissent: Davis—1 page. (57)

Off-duty conduct; grievor supplying alcohol to on-duty employee—grievance dismissed. *Re Canada Cement Lafarge Limited and United Cement, Lime and Gypsum Workers International Union, Local 368; Pearson grievance*, March 6, 1980. Majority: Palmer, Dinsdale—11 pages; dissent: Nokes. (58)

Refusal to work overtime; grievor mistakenly believing that overtime voluntary—grievance denied. *Re Boise Cascade Canada Limited and International Brotherhood of Electrical Workers, Local 1744; Perlette grievance*, March 14, 1980. Rayner—5 pages. (59)

Refusal to work overtime—suspension justified; grievance dismissed. *Re Fisher Controls Company of Canada Limited and United Automobile Workers, Local 636; Porter grievance*, February 26, 1980. Majority: O'Shea, Werry—13 pages; dissent: Blackburn—2 pages. (60)

Restriction of production—adversely affecting incentive earnings of others: grievance dismissed. *Re Welland Forge Limited and United Electrical, Radio and Machine Workers of America, Local 523; O'Brien grievance*, February 26, 1980. Majority: O'Shea, McDermott—12 pages; dissent: Bosnich. (61)

Unauthorized absence—grievance dismissed. *Re Steel Company of Canada Ltd., Hilton Works, and United Steelworkers of America, Local 1005; Gee grievance*, February 19, 1980. Beatty, Dunsmore, Fuller—5 pages. (62)

Unjustifiable absence—employer previously imposing conditions for absence; grievance denied. *Re Sherman Mine, Cliffs of Canada, Ltd., and United Steelworkers; Benoit grievance*, February 19, 1980. McLaren—12 pages. (63)

Unsafe act—grievor failed to secure lift truck on elevator: reasonableness of discipline; grievance denied. *Re Gates Rubber of Canada Limited and United Rubber, Cork, Linoleum and Plastic Workers of America, Local 733; Hastings grievance*, March 10, 1980. Majority: Weatherill, Storie—7 pages; dissent: Hoover—1 page. (64)

#### **Employer Liability**

Theft of employee's property—company responsible for theft where obligation to provide properly secured area for belongings; grievance allowed. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 414; Cigna grievance*, November 15, 1979. Majority: Egan, Dahmer—6 pages; dissent: White—2 pages. (65)

#### **Estoppel**

Alleged oral agreement not giving rise to estoppel—grievances allowed in part. *Re Freedland Industries, Limited, and United Automobile Workers, Local 1769; Dresser, Moore and Smith grievances*, March 24, 1980. Gorsky—5 pages. (66)

Parties agreeing to change the grievances submitted to arbitration: employer seeking to withdraw from that agreement—estoppel applied. *Re Byron Jackson Division, Borg-Warner (Canada) Limited, and International Association of Machinists and Aerospace Workers, Lodge 235; Baptiste, Fleming grievances*, May 30, 1979. Majority: Ord, Tate—21 pages; dissent: Drmaj. (67)

#### **Grievance Procedure**

Timeliness—time for filing grievance extended pursuant to s. 37(5a) of *The Labour Relations Act*. *Re Salvation Army Grace Hospital and Service Employees' Union, Local 210; Brown grievance*, February 28, 1980. See (23), *supra*. (68)\*

#### **Holiday Pay**

Lay-off during occurrence of holidays—grievors working between last previous holiday and first holiday in question, but not between first and second; grievances allowed in part. *Re Ault Foods Limited and United Dairy and Creamery Workers, Local 477; French et al grievances*, January 29, 1980. Roach, Donnelly, Kelly—12 pages. (69)

Qualifying days—leave of absence satisfactory reason for absence: grievance allowed. *Re Massey-Ferguson Industries Limited and United Automobile Workers; Twal grievance*, March 3, 1980. Egan—5 pages. (70)

#### **Holidays**

Illness occurring on lieu day and floating holiday—employer not required to reschedule lieu day and floating holiday to allow grievors to collect sick pay; grievances dismissed. *Re Ontario Hydro and Canadian Union of Public Employees—C.L.C., Ontario Hydro Employees' Union, Local 1000; Zukov, Shier and McCullough grievances*, March 21, 1980. Majority: Burkett, McCuaig—20 pages; did not concur: Scott. (71)

#### **Hours of Work**

Duties ancillary to teaching—employer must pay grievors for performing tasks which are part of the core of a teacher's duties; grievances allowed in part. *Re Ontario Council of Regents for Colleges of Applied Arts and Technology (Fanshawe College) and Ontario Public Service Employees' Union; Beattie, Liabotis, Crook and Sellick grievances*, March 6, 1980. Majority: Rayner, Cochrane—10 pages; partial dissent: Hubert—1 page. (72)

#### **Job Posting**

Breach of collective agreement—vacancy filled without posting; grievance allowed. *Re Spruce Falls Power and Paper Co. Ltd. and Lumber and Sawmill Workers' Union, Local 2995; Vachon grievance*, February 28, 1980. Teplitsky, Bernardo, Wren—8 pages. (73)

Higher-rated employee applying—grievor entitled to consideration; grievance allowed. *Re Consolidated-Bathurst Packaging Limited and International Woodworkers of America, Local 2-233; Butler grievance*, February 8, 1980. Majority: Brunner, Alper—7 pages; dissent: Rogers—4 pages. (74)\*

#### **Lay-Off**

Inventory period—lay-off justified by lack of work; recall proper; grievance dismissed. *Re Sunbeam Corporation (Canada) Limited and Federal Labour Union No. 24762, C.L.C.; McKenzie grievance*, February 6, 1980. Majority: Brunner, Heather—9 pages; dissent: Peters—2 pages. (75)

Non-competitive seniority clause—grievor sufficiently qualified; unusual business concerns not overriding the collective agreement; grievance allowed. *Re National Pressed Glass (1976) Limited and United Glass and Ceramic Workers, A.F.L.-C.I.O.-CLC; Pettipas grievance*, March 12, 1980. Majority: Shime, Ferguson—13 pages; dissent: Daboll—3 pages. (76)

Qualifications—grievor having skills sufficient to entitle him to a transfer; grievance allowed. *Re Westinghouse Canada Limited and United Electrical, Radio and Machine Workers of America, Local 504; Gray grievance*, January 25, 1980. Majority: J.L. Roberts, Bosnich—25 pages; dissent: Danforth—2 pages. (77)

Reduction of hours of part-time employees—not a lay-off; grievance dismissed. *Re Dufferin Area Hospital, Orangeville, and Service Employees' Union, Local 204; Goodfellow grievance*, March 7, 1980. O'Connor—8 pages. (78)†

Transfer of foremen back to unit—proper where foremen have greater seniority than bargaining unit employees laid off; grievance denied. *Re Foster Wheeler Limited and United Steelworkers of America, Local 6519; policy grievance*, March 6, 1980. Weatherill—8 pages. (79)

#### Maternity Leave

Denial of certain benefits while on maternity leave—collective agreement providing that employees on such leave “shall retain and accumulate full seniority rights and benefits”; grievance allowed. *Re Essex, Corporation of County of, and Ontario Nurses' Association; Francis grievance*, February 22, 1980. Majority: Brunner, Symes—8 pages; dissent: Thrasher. (80)\*

#### Overtime

Distribution—provision restricting exercise of rights to sub-departments established by employer not applicable; grievance allowed. *Re Hamilton Street Railway Company and Amalgamated Transit Union, Local 107; Smith grievance*, February 29, 1980. Majority: McLaren, Bosnich—11 pages; dissent: Billings—1 page. (81)

#### Overtime Pay

Calculation of rate—hours calculated on daily periods not continuous periods of work; grievance dismissed. *Re Outboard Marine Corporation of Canada Ltd. and United Steelworkers of America, Local 5009; Hendren grievance*, March 5, 1980. Palmer—7 pages. (82)

Change of schedule—grievor's entitlement while on an alternative schedule not affected by change; grievance allowed. *Re American Can of Canada Limited and Sheet Metal Workers' International Association, Local 487; Sykes grievance*. See (3), *supra*. (83)

#### Premium Pay

Court attendance premium—applicable where officer attends court beyond normal quitting time; grievances allowed. *Re Board of Commissioners of Police for the Regional Municipality of Durham and The Durham Regional Police Association; Udall, Reid, Allen grievances*, March 4, 1980. Brent—11 pages. (84)

Pyramiding of premiums—employees entitled to both overtime and premium pay where applicable; grievance allowed. *Re Brampton, City of, and Amalgamated Transit Union, Local 1573; union grievance*, March 4, 1980. Majority: Weatherill, Johnson—10 pages; dissent: Filion—2 pages. (85)\*

#### Probationary Employee

Discharge—not subject to review unless evidence of management decision being arbitrary, discriminatory or in bad faith; grievance dismissed. *Re The Stormont, Dundas and Glengarry County Roman Catholic Separate School Board and Ontario English Catholic Teachers' Association; Latour grievance*, March 31, 1980. Brunner, Sirois, McLean—19 pages. (86)

#### Procedure

Adjournment—witness not available; adjournment granted. *Re Steel Company of Canada Limited, Gananoque Works, and United Steelworkers of America, Local 3208; Thompson grievance*, February 26, 1980. Majority: H.D. Brown, Curtis—5 pages; dissent: Murray—6 pages. (87)

#### Promotion

Lower-rated job applied for—not a promotion for grievor; grievance dismissed. *Re Haley Industries Limited and United Steelworkers of America, Local 4820; Rouble grievance*, March 10, 1980. Majority: H.D. Brown, Churchill-Smith—11 pages; dissent: Taylor. (88)

Position filled according to proper standards and procedures—grievance dismissed. *Re Addiction Research Foundation and Noe I. Beauchesne (grievor)*; March 25, 1980. Satterfield—17 pages. (89)

Qualifications; assessment where neither candidate has experience—matter not to be decided by seniority alone; grievance dismissed. *Re Eldorado Nuclear Limited and United Steelworkers of America, Locals 1317 and 8562; union grievance*, February 26, 1980. Teplitsky—3 pages. (90)

Qualifications—comparison of applicants not rendered mandatory despite provision for training period; grievance dismissed. *Re Marshall Steel Limited, Bomac Division, and United Steelworkers of America, Local 4947; Sharma grievance*, March 9, 1980. Schiff—11 pages. (91)

Qualifications; employer entitled to set qualification requirements as long as this is done in good faith and bears reasonable relationship to the work to be done—grievor not entitled to trial period; grievance dismissed. *Re Morbern Industries Limited and Local 9 of International Leather Goods, Plastics and Novelty Workers Union; Harrop grievance*, March 5, 1980. Carter—9 pages. (92)

Qualifications—employer's assessment of grievor and qualifications required for job reasonable; grievance denied. *Re Ottawa Roman Catholic Separate School Board and Service and Commercial Employees Union, Local 272; Jodoin grievance*, January 7, 1980. Majority: Abbott, Langley—16 pages; dissent: Dunn—2 pages. (93)

Qualifications—grievor found not to have communication skills equal to those of successful applicant; qualifications required by employer were reasonably related to the job and were set in good faith; grievance dismissed. *Re North York, Corporation of the City of, and North York Foremen's Association, Local 711, Federico grievance*, March 6, 1980. Majority: Kennedy, McDermott—12 pages; dissent: Lewis—5 pages. (94)

Qualifications—grievor not adequately qualified; grievance dismissed. *Re Amalgamated Electric Corporation Limited and International Brotherhood of Electrical Workers, Local 1590; Booth grievance*, February 20, 1980. Majority: J.L. Roberts, Bertuzzi—24 pages; dissent: Cox. (95)

Qualifications—grievor unable to perform the normal requirements of the job; grievance dismissed. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 414; Riddell grievance*, March 10, 1980. Majority: Brunner, White—10 pages; dissent: Spaxman—2 pages. (96)

Qualifications—sex a *bona fide* occupational qualification; grievance dismissed. *Re Huronia District Hospital and Service Employees Union, Local 204; Mendel grievance*, February 29, 1980. Majority: Schiff, Wolfenden—9 pages; dissent: Wren—5 pages; addendum: Schiff, Wolfenden—2 pages. (97)\*

Seniority to be given reasonable consideration along with other factors—grievances allowed. *Re Stratford, Corporation of City of, and Stratford Professional Firefighters Association, Local 534; Richards, Heinbuck, Creek, Shantz, Lingard grievances*, March 7, 1980. Shime—28 pages. (98)\*

Temporary vacancy; collective agreement providing senior employee to fill vacancy unless prevented by operational requirements—onus met by employer; grievance dismissed. *Re Steel Company of Canada, Limited, Hilton Works, and United Steelworkers of America, Local 1005; Hayward grievance*, March 21, 1980. Majority: Palmer, Winkler—11 pages; dissent: Davis—1 page. (99)

#### Recall

Entitlement to return to same location—grievance dismissed. *Re Spruce Falls Power and Paper Co. Ltd. and Lumber and Sawmill Workers' Union, Local 2995; Vachon grievance*. See (73), *supra*. (100)

#### Res Judicata

Agreement to outcome of arbitration to grievances—reasoning of arbitrator to be applied; grievance allowed. *Re Red-D-Mix Concrete Company and Teamsters Union, Local 141; Kaufman grievance*, January 30, 1980. Majority: J.L. Roberts, Kobrym—5 pages; dissent: Fryzuk—2 pages. (101)

#### Retirement Gratuity

Qualifying conditions—conditions not met; grievance dismissed. *Re Windsor Roman Catholic School Board and Ontario English Catholic Teachers' Association; Dwyer grievance*, February 26, 1980. Ianni, Dupuis, Keane—7 pages. (102)

#### Scheduling of Work

Averaging of hours required—failure of administrator to implement proper shift system; grievance allowed. *Re Sarnia, Corporation of Township of, and Sarnia Township Professional Firefighters Association; union grievance*, March 26, 1980. McIver—8 pages. (103)

Shift change without notice—entitlement to relief in absence of emergency; grievance allowed in part. *Re Metropolitan Toronto, Municipality of, and Canadian Union of Public Employees, Local 43; O'Neill grievance No. M-79-3*, March 17, 1980. Majority: Weatherill, Tate—6 pages; dissent: Murray—2 pages. (104)

#### Seniority

Calculation—length of service credited from commencement of employment with hospital, not in bargaining unit; grievance dismissed. *Re Pembroke General Hospital and Ontario Nurses' Association; association policy grievance*, December 19, 1979. Majority: Abbott, Harnden—20 pages; dissent: Butler. (105)

Qualifications: appropriate standard of arbitral review—arbitrator must be satisfied that collective agreement has been complied with by taking the proper criteria into account, that the decision was procedurally fair, and that the employer's evaluation of the proper criteria was reasonable; grievance dismissed. *Re Northern Telecom Limited and United Automobile Workers, Local 1839; Mitchell grievance*, March 17, 1980. Fraser—18 pages. (106)\*

#### Sick Pay

Doctor's certificate—employer not liable for cost of certificate; grievance dismissed. *Re Toronto Transit Commission and Amalgamated Transit Union, Local 113; union grievance*, March 14, 1980. Majority: Palmer, Filion—9 pages; dissent: Wren. (107)

Entitlement—grievor ill, proper notice given and no request for proof made; grievance allowed. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 414; Cowick grievance*, March 19, 1980. Weatherill, Wynter, White—9 pages. (108)

#### Transfer

Assignment to different job, at lower pay, to fill in for employee given compassionate leave—grievor entitled to recover lost pay; grievance allowed. *Re Armco Canada Ltd. and United Steelworkers of America, Local 4054; Kilcoyne grievance*, March 11, 1980. O'Shea—10 pages. (109)\*

Movement of work location and employees to another area—not a change of "work area"; grievance dismissed. *Re DeHavilland Aircraft of Canada Limited and United Automobile Workers, Local 112; group grievance*, February 25, 1980. H.D. Brown—10 pages. (110)\*

Temporary shift change to fill vacancy—discriminatory selection alleged; grievance dismissed. *Re Metropolitan Toronto, Municipality of, and Canadian Union of Public Employees, Local 43; O'Neill grievance No. M-79-5*, March 17, 1980. Majority: Weatherill, Murray—10 pages; dissent: Tate—2 pages. (111)

#### Union Rights

Paid time-off for safety committee—claim not established on facts; grievance denied. *Re Steel Company of Canada Limited, Hilton Works, and United Steelworkers of America, Local 1005; West grievance*, February 14, 1980. Palmer, Beresford, O'Neil—4 pages. (112)

Steward prevented from speaking for grievor in framing grievance—steward acts as representative under agreement for purpose of providing employee with expertise of another more familiar with collective agreement; grievance allowed. *Re Steel Company of Canada Limited and United Steelworkers of America, Local 1005; union policy grievance*, March 31, 1980. Majority: R.J. Roberts, Berry—6 pages; dissent: Riggs—5 pages. (113)

Super-seniority—entitlement to “bump up”; grievance allowed. *Re International Harvester Company of Canada Limited and United Steelworkers of America, Local 4592; Hanson grievance*, February 6, 1980. Majority: Teplitsky, Yule—6 pages; dissent: Lanz. (114)

#### Vacations

Scheduling—management discretion in not allowing shippers December vacations; grievance dismissed. *Re Pirelli Cables Limited and United Steelworkers of America, Local 3021; policy grievance*, March 7, 1980. O’Shea—11 pages. (115)

#### Wages

Guaranteed minimum wage calculation—grievance dismissed. *Re Humpty Dumpty Foods Limited and Retail, Wholesale and Department Store Union, Local 461; Gervais grievance*, February 29, 1980. Majority: Kennedy, Spaxman—9 pages; dissent: Pogson—6 pages; addendum: Pogson—2 pages. (116)

Implementation of new increments—effective as of inception; grievance allowed. *Re Leeds, Grenville and Lanark District Health Unit and Ontario Nurses’ Association; association grievance*, February 29, 1980. Majority: Saltman, Angus—8 pages; dissent: Sargeant—3 pages. (117)

Incentive plan; charging of defective work—employer having right to set production standards; grievance dismissed. *Re Canadian Timken Limited and United Steelworkers of America, Local 4906; Smith grievance*, March 12, 1980. H.D. Brown—12 pages. (118)

Salary scale—permissible to place new employees above scale minimum; grievance dismissed. *Re University of Windsor and Canadian Union of Public Employees, Local 1393; union grievance*, March 5, 1980. O’Shea—15 pages. (119)

#### Work Assignment

Administration of new benefit plans assigned to non-bargaining unit employee—similar work previously done by non-bargaining unit employees—grievance dismissed. *Re Abitibi Forest Products Limited and Office and Professional Employees International Union, Local 236; policy grievance*, February 11, 1980. Majority: O’Connor, Murray—17 pages; did not concur: Hobbs. (120)

Bargaining unit work also being performed by employees outside unit; grievance upheld. *Re DeHavilland Aircraft of Canada Limited and United Automobile Workers, Local 112; union grievance*, February 25, 1980. H.D. Brown—12 pages. (121)

Non-bargaining unit employees assigned work—was not done by any person who fell within the prohibited group specifically referred to in the agreement; grievance dismissed. *Re SKF Canada Ltd. and International Association of Machinists and Aerospace Workers, Local 901; union grievance*, March 7, 1980. Shime, Murray—3 pages; addendum: Switzman—1 page. (122)

The following awards in interest arbitrations under *The Hospital Labour Disputes Arbitration Act* were also filed with the Office of Arbitration during the month of March, 1980.

*Haldimand-Norfolk, Corporation of Regional Municipality of, (Norview Home for the Aged), and London and District Service Workers’ Union, Local 220 (full-time employees)*, Waisglass, Walsh—5 pages; partial dissent: Yeo—1 page.

*Haldimand-Norfolk, Corporation of Regional Municipality of, (Norview Home for the Aged), and London and District Service Workers’ Union, Local 220 (part-time employees)*, Waisglass, Walsh—4 pages; partial dissent: Yeo—2 pages.

*Haldimand-Norfolk, Corporation of Regional Municipality of, (Norview Home for the Aged), and London and District Service Workers’ Union, Local 220 (office and clerical employees)*, Waisglass, Walsh—4 pages; partial dissent: Yeo—1 page.

*Nel-Gor Castle Nursing Home and London and District Service Workers’ Union, Local 220*, H.D. Brown, Walsh—16 pages; addendum: Walsh—1 page; partial dissent: Wace—2 pages.

*Nickel Centre Nursing Home and Canadian Union of Public Employees, Local 2219*, Betcherman, Valin—9 pages; addendum: Valin—1 page; dissent: Pharand—4 pages; addendum: Betcherman—1 page.

*Perley Hospital and Canadian Union of Public Employees, Local 870*, H.D. Brown, Switzman—11 pages; dissent: Whittaker—5 pages.

*Port Colborne General Hospital and Ontario Nurses’ Association*, Teplitsky, Goudge, Dixon—4 pages.

*Scarborough Centenary Hospital and Ontario Nurses’ Association* (supplemental award), Baum, Shakes, Angus—3 pages.

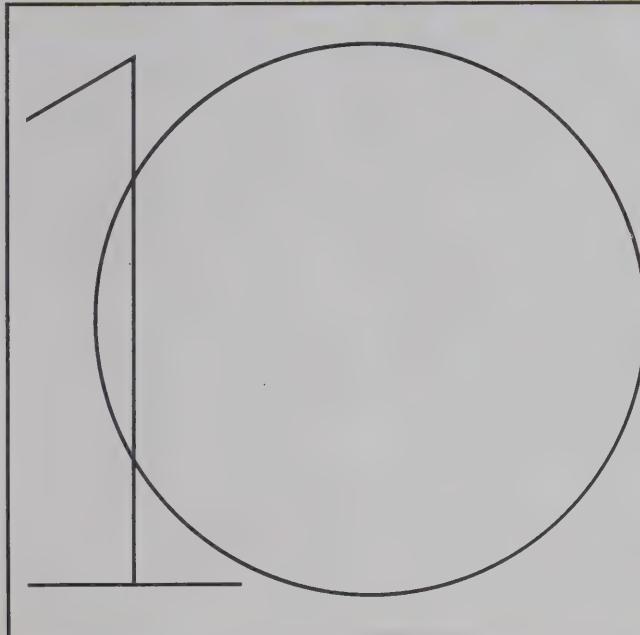
*Sudbury Memorial Hospital and Ontario Public Service Employees Union, Local 619* (supplement to award), Ord, Wren—3 pages; dissent in part: Buckland—4 pages.

*Victoria Hospital Corporation and London and District Service Workers’ Union, Local 220*, H.D. Brown, Tarasuk—7 pages; dissent: Switzman—2 pages.

*VS Services Limited and Canadian Union of Public Employees; Local 1565* (employees at Barton Place Nursing Homes, Toronto), Waisglass, Caryll, Monkman—3 pages.

*White Eagle Nursing Homes Limited and Service Employees International Union, Local 204*, Rayner—24 pages; partial dissent: Wren—2 pages; dissent: Noonan—3 pages.

# Monthly Bulletin



Office of Arbitration

Miss Jean M. Read, Director.



Ontario

Ontario Ministry of Labour  
400 University Avenue, 6th Floor  
Toronto, Ontario  
M7A 1T7  
Tel. (416) 965-5669

Hon. Robert Elgie, M.D., Minister  
T.E. Armstrong, QC, Deputy Minister

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Office of Arbitration as a service to  
persons involved in labour-management  
arbitrations.

#### Appointment of Arbitrators

Forms for requests for appointment of arbitrator under Section 37a of *The Labour Relations Act* are available on request, from the Office of Arbitration.

#### Awards

The following awards were filed with the Office of Arbitration during the month of April, 1980.

The summary was prepared at the Faculty of Law, Queen's University, under the supervision of C.G. Simmons, B.A., B.C.L., LL.M., and D.D. Carter, B.A., B.C.L., LL.B.

\*Indicates award to be reported in full or in part in *Labour Arbitration Cases*.

†Indicates award issued under section 37a of *The Labour Relations Act*.

#### Arbitrability

Timeliness: steward disappearing mysteriously after initial filing of grievance — grievance re-filed after time limit; section 37(5a) applied. *Re City of Toronto, Corporation of, and Canadian Union of Public Employees, Local 43; Regina grievance*, March 24, 1980. Majority: Verity, Tate — 17 pages; dissent: Paulin. (1)

**Classification**

Lead hand position not posted — job permanent and distinct from prior classification; grievance allowed.

*Re Anchor Cap and Closure Corporation of Canada Ltd. and United Electrical, Radio and Machine Workers of America, Local 512; union grievance*, March 19, 1980.

Majority: Aggarwal, Russell — 27 pages; dissent: Drmaj — 3 pages. (2)\*

New classification — required by reasons of efficiency and changes of production; grievance denied. *Re Exolon Co. of Canada Ltd. and Local 36, Canadian Chemical Workers Union; union grievance*, March 31, 1980. H.D. Brown, McKillop, McIlwain — 17 pages. (3)

Performance of job duties in higher classification alleged — grievance dismissed. *Re DeHavilland Aircraft of Canada Ltd. and United Automobile Workers, Local 112; group grievance*, April 23, 1980. H.D. Brown — 10 pages. (4)

Reassignment of job tasks; rate adjustment referred to Company and Union. *Re Multi Fittings Ltd. and International Moulders and Allied Workers Union, Local 49; union grievance*, March 26, 1980. Shime — 11 pages. (5)

**Collective Agreement**

Effect of amalgamation of companies — amalgamated company assuming obligations of amalgamating companies but no employees in bargaining unit; grievance dismissed. *Re Domtar Incorporated and Teamsters Local Union 938; union grievance*, April 17, 1980. Majority: Brunner, Byers — 16 pages; did not concur: Petryshen. (6)

Retroactive pay — lump sum payment pro-rated to reflect days off on legal strike during period of settlement; grievance dismissed. *Re Dome Mines Limited and United Steelworkers of America; union grievance*, April 9, 1980. Majority: O'Shea, B. Burkett — 8 pages; dissent: Hoffman. (7)

**Damages**

Calculation of quantum — appropriate considerations. *Re Falconbridge Nickel Mines Limited and Sudbury Mine, Mill and Smelter Workers Union, Local 598; St. Jean grievance*, February 26, 1980. Majority: Brunner, Tester — 6 pages; dissent in part: Valin — 3 pages. (8)

Calculation of quantum — damages restricted to monetary loss; duty to mitigate loss; compensation calculated individually. *Re Transit Windsor and Amalgamated Transit Union, Division 616; employee grievances*, April 9, 1980. Majority: Hinnegan, Evans — 14 pages; dissent: Oana. (9)

Mitigation: refusal to accept jobs from other employers — grievor still making reasonable attempt to find other employment; entitled to full back pay including pay for overtime opportunities and welfare benefits paid by him while off work. *Re International Harvester of Canada Limited and United Automobile Workers, Local 127; Dewitt grievance*, April 18, 1980. Rayner — 9 pages. (10)\*

**Demotion**

Disciplinary demotion — indefinite demotion not appropriate; reinstatement without compensation. *Re Libby, McNeill and Libby of Canada Limited, Container Factory, and Sheet Metal Workers' International Association, Local 234; Mallett grievance*, April 18, 1980. O'Shea — 22 pages. (11)

**Discharge**

Absence without notice — notice for one day can not be construed as notice for subsequent days; grievance denied. *Re Religious Hospitallers of Hotel Dieu of St. Joseph of Diocese of London and Service Employees Union, Local 210; Kadiri grievance*, April 2, 1980. Majority: McIver, Burnell — 4 pages; dissent: McConville. (12)

Absence without permission — permission implied from company's knowledge of grievor seeking medical help and valid medical reasons; grievance allowed. *Re Pilkington Brothers (Canada) Ltd. and International Chemical Workers Union, Local 985; Bexis grievance*, November 30, 1979. H.D. Brown, Wilson, Healy — 26 pages. (13)

Absenteeism — grievor's record of absenteeism: culminating incident; onus shifts to grievor to show improved future attendance; grievance dismissed. *Re Windsor Western Hospital Centre Inc. (I.O.D.E. Unit) and Service Employees Union, Local 210; Roberts grievance*, April 8, 1980.

Majority: O'Shea, Bartlet — 20 pages; dissent: McConville. (14)

Absenteeism, failure to obey orders, intoxication — no adequate explanation for grievor's bad work record; grievance dismissed. *Re Dominion Textile Incorporated and United Textile Workers of America, Local 469; Garand grievance*, March 4, 1980. Scott, Bouchard, Mills — 6 pages. (15)

Absenteeism — record of disciplinary and non-disciplinary warnings; reinstatement without compensation. *Re Consolidated-Bathurst Packaging Limited and International Woodworkers of America, Local 2-76; LeBlanc grievance*, April 15, 1980. Majority: Curtis, Schachter — 18 pages; dissent: Rogers — 3 pages. (16)

Carelessness and insubordination — insufficient to merit discharge; suspension substituted. *Re Fiberglas Canada Limited and Oil, Chemical and Atomic Workers' International Union, Local 9-14; Parker grievance*, April 10, 1980. Hinnegan — 10 pages. (17)

Culminating incident — grievor had poor record during brief period of employment; final incident found to be serious; grievance dismissed. *Re Macdonalds Consolidated and Teamsters Union, Local 419; Reeder grievance*, April 15, 1980. Majority: Palmer, McNaughton — 8 pages; dissent: Petryshen. (18)

Dishonesty — grievor's conduct very serious; no mitigating factors; grievance dismissed. *Re Molly and Me Limited and Local 280, International Beverage Dispensers' and Bartenders' Union of the Hotel and Restaurant Employees' and Bartenders' International Union; Liberogannis grievance*, April 3, 1980. Majority: MacDowell, Rosenberg — 22 pages; dissent: Fagan — 4 pages. (19)

Failure to perform job duties — given past work record and final incident penalty imposed found to be proper discipline; grievance dismissed. *Re Norton Company Electric Furnace Plants and International Chemical Workers' Union, Local 154; Mallett grievance*, April 16, 1980. H.D. Brown — 21 pages. (20)

Inability to perform work — grievor not being able to complete work quickly constitutes just cause; grievance dismissed. *Re Millwrights and Machine Erectors, Local 1592, and Office and Professional Employees' Union, Local 343; Overdulve grievance*, March 9, 1980. Majority: McIver, Manson — 12 pages; dissent: Brown. (21)

Insubordination — grievor refusing direct order; grievor verbally and physically abusing supervisor; grievance dismissed. *Re National Grocers Company Limited and Retail, Wholesale and Department Store Union, Local 427; Kolomeitz grievance*, April 9, 1980. Majority: O'Shea, McCormack — 18 pages; dissent: Prudhomme. (22)

Insubordination: grievor's explanation not accepted — prior record not justifying discharge; suspension substituted. *Re Binder Tool and Mold Limited and United Automobile Workers, Local 195; Hatton grievance*, April 15, 1980. McCullough — 7 pages. (23)

Insubordination; refusal to obey order — no reason for refusal suggested; culminating incident; grievance dismissed. *Re Canadian General-Tower Limited and United Rubber, Cork, Linoleum and Plastic Workers of America, Local 292; Wheatly grievance*, April 10, 1980. Majority: Brandt, Healy — 17 pages; dissent: Collins. (24)

Insubordination; remarks made at grievance meeting amounting to culminating incident — grievance dismissed. *Re Teskey Ready-Mix Limited and Teamsters' Local Union 230; Bristo grievance*, March 31, 1980. Majority: Brandt, Mitchnick — 23 pages; dissent: Thomson. (25)

Leaving work without permission — grievor's record considered to determine appropriate penalty; reinstatement without compensation. *Re Hussmann Store Equipment Limited and United Automobile Workers, Local 397; Chapman grievance*, March 31, 1980. Palmer — 22 pages. (26)

Neglect of duty — suspension substituted. *Re Oshawa General Hospital and Canadian Union of Public Employees, Local 45; Froud grievance*, March 31, 1980. H.D. Brown, Cherry, LeMay — 21 pages. (27)

Patient abuse alleged — onus not satisfied; reinstatement with compensation. *Re Ongwanada Hospital and Ontario Public Service Employees Union; anonymous grievance*, April 9, 1980. Majority: P.C. Picher, Switzman — 35 pages; dissent: Wakely — 12 pages; addendum: Picher, Switzman — 3 pages. (28)

Theft alleged — standard of proof where criminal act is involved in civil matter is balance of probabilities, but subject to "special scrutiny"; grievance allowed. *Re University of Windsor and Canadian Union of Operating Engineers and General Workers, Local 100; Ives grievance*, April 21, 1980. Brent — 34 pages. (29)

Unauthorized removal of company property; plant rules providing specific penalty — Board having no jurisdiction to alter penalty; grievance dismissed. *Re Kimberly-Clark of Canada Limited and Canadian Paperworkers National Union, Local 256; Fortin grievance*, March 27, 1980. Majority: Rayner, Grossman — 14 pages; dissent: Stencer — 5 pages. (30)

Unsatisfactory work performance — progressive discipline should have been used; grievor reinstated but demoted. *Re Metal Craft Manufacturing Limited and Sheet Metal Workers International Association, Local 540; Sokoloski grievance*, March 14, 1980. Majority: Sheppard, Rowaan — 17 pages; did not concur: Thompson. (31)

**Discipline**

Absence from work — inadequate notice of employer's policy to grievor whose first language was not English; grievance allowed. *Re City of Toronto, Corporation of, and Canadian Union of Public Employees*. See (1), *supra*. (32)

Absence without leave — grievor unjustly denied leave when requested; grievance allowed. *Re Bundy of Canada Limited and United Automobile Workers, Local 1285; Maes (No. 1) grievance*, April 8, 1980. H.D. Brown — 16 pages. (33)

Absence without leave — grievor's request for leave denied due to lack of replacement; suspension lessened. *Re Bundy of Canada Limited and United Automobile Workers, Local 1285; Maes (No. 2) grievance*, April 8, 1980. H.D. Brown — 18 pages. (34)

Absenteeism — no just cause for suspension in final incident; absenteeism found innocent: grievance allowed. *Re Metro Toronto News Company and Teamsters Union, Local 419; Sterling grievance*, April 28, 1980. H.D. Brown, Cowan, Bodkin — 15 pages; addendum: Cowan — 1 page. (35)

Assault upon foreman — grievance dismissed. *Re General Motors of Canada Limited and United Automobile Workers, Local 199; O'Dell grievance*, March 31, 1980. Palmer — 10 pages. (36)

Carelessness — five day suspension reduced to one day. *Re Canadian Canners Ltd., Can Plant No. 93, and International Association of Machinists and Aerospace Workers, Lodge No. 863; Robbins grievance*, April 29, 1980. Majority: Linden, Tate — 9 pages; dissent: Harris — 2 pages. (37)

Culminating incident; poor work attitude — record justifying discipline; grievance dismissed. *Re Victory Soya Mills Ltd. and International Chemical Workers, Local 247; French grievance*, April 23, 1980. Majority: Palmer, Farrar — 30 pages; dissent: Wilson — 4 pages. (38)

Dishonesty — grievor punching fellow employee's time card found just cause for discipline; grievance dismissed. *Re Levi Strauss Canada and Amalgamated Clothing and Textile Workers Union; Bell grievance*, April 21, 1980. Arthurs — 5 pages. (39)\*

Failure to return to work on time after previous suspension; grievor's explanation of being held up in traffic is unacceptable; grievance dismissed. *Re Duplate Canada Limited and United Automobile Workers, Locals 222 and 1661; Tichbourne grievance*, April 21, 1980. H.D. Brown — 13 pages. (40)

Failure to wear safety equipment alleged — justification for company warning letter; grievance dismissed. *Re Steel Company of Canada Ltd. and United Steelworkers of America, Local 1005; DiLoreto grievance*, April 15, 1980. Majority: Beatty, Murray — 5 pages; dissent: Lampert — 1 page. (41)

Falsification of time cards — penalty not inconsistent with that in other cases; grievance dismissed. *Re AEL Microtel Limited and International Union of Electrical, Radio and Machine Workers; Madigan grievance*, April 9, 1980.

Majority: M. Picher, Healy — 11 pages; dissent: Herman — 3 pages. (42)

Insubordination: delay in reporting for work assignment — grievor's excuse reasonable; grievance allowed. *Re Steel Company of Canada Limited and United Steelworkers of America, Local 1005; Moores grievance*, April 18, 1980. Majority: H.D. Brown, MacPherson — 14 pages; dissent: Riggs — 5 pages. (43)

Insubordination: disobedience of safety rules and abusive conduct to plant protection officer justifying suspension; grievance dismissed. *Re Steel Company of Canada Limited, (Hilton Works), and United Steelworkers, Local 1005; Fleet grievance*, March 17, 1980. Majority: Sheppard, Storie — 11 pages; dissent: Craven — 7 pages. (44)

Insubordination: failure to follow order considered to violate collective agreement — "work-now-grieve-later" policy applicable; grievance dismissed. *Re Silverwood Dairies and Canadian Union of Operating Engineers and General Workers, Local 101; union grievance*, March 5, 1980. Majority: Schiff, Salmon — 9 pages; dissent: Sleva — 10 pages. (45)\*

Insubordination: grievor refusing to obey a direct order — exceptions to obey now, grieve later, rule not applicable; penalty not excessive; grievance dismissed. *Re Inter-City Truck Lines (Canada) Incorporated and Teamsters Union, Local 880; Parsons grievance*, March 27, 1980. Rayner, Kobry, Peel — 8 pages. (46)

Insubordination; justification for refusing order on grounds of safety and employee responsibility — grievance dismissed. *Re Continental Group of Canada Limited and Graphic Arts International Union Local 12L; Saladyga grievance*, April 15, 1980. Majority: Rayner, Noonan — 14 pages; dissent: Rusk. (47)\*

Insubordination; leaving plant without permission, verbally abusive to foreman — suspension reduced. *Re Dominion Chain Company and International Association of Machinists and Aerospace Workers; Shrubsole grievance*, March 31, 1980. Shime, Allaster, Jardine — 12 pages. (48)

Insubordination: refusal of work assignment because of medical condition — employer failing to determine extent of grievor's medical complaint; written warning more appropriate than suspension given grievor's work record. *Re Canadian Appliance Manufacturing Company and United Steelworkers of America, Local 3129; Pascaris grievance*, April 29, 1980. Linden — 8 pages. (49)

Insubordination; refusal to work overtime — request violating provisions of *The Employment Standards Act, 1974*; grievances allowed. *Re Hauserman Limited and United Steelworkers of America; Hayward and White grievances*, April 14, 1980. Brunner — 13 pages. (50)

Lateness — collective agreement allowing one half-hour grace period; grievances allowed. *Re Long Manufacturing Division, Borg-Warner (Canada) Limited and International Association of Machinists and Aerospace Workers, Local 2330; Deighan and Russell grievances*, April 2, 1980. Teplitsky, Lewis, Boehmer — 4 pages. (51)

Negligence leading to accident — lack of reasonable care by employee and employer; grievance allowed in part. *Re Texport Division of Oxford Warehousing Limited and Teamsters Union, Local 983; MacNevin grievance*, March 4, 1980. Majority: Brunner, Singleton — 10 pages; dissent: Petryshen — 1 page. (52)

Offensive language — employer not meeting onus of proof; grievance allowed. *Re Abex Industries Limited and Chemical Energy and Allied Workers Division, Canadian Conference of Teamsters, Local 175; Nahirney grievance*, March 31, 1980. Kennedy, Pogson, Martin — 6 pages. (53)

Offensive language — employer not meeting onus of proof; grievance allowed. *Re Dominion Chain Company and International Association of Machinists and Aerospace Workers; Shrubsole grievance*, March 31, 1980. Shime, Allaster, Jardine — 5 pages. (54)

Unsatisfactory work performance — established on facts; grievance dismissed. *Re Abex Industries Limited and Chemical Energy and Allied Workers Division, Canadian Conference of Teamsters, Local 175; Joncas grievance*, March 31, 1980. Kennedy, Pogson, Martin — 5 pages. (55)

### Estoppel

Past practice of paying additional benefit — union unable to meet conditions necessary to raise an estoppel against employer; grievance dismissed. *Re Domglas Limited and United Glass and Ceramic Workers of North America, Local 203; group grievance*, April 18, 1980. Majority: Burkett, Dinsdale — 21 pages; dissent: Smith. (56)\*

### Grievance Procedure

Failure of employer to submit written reasons for discharge at second step of grievance procedure — written reasons ordered. *Re Hanmer Bus Lines Incorporated and Canadian Union of Public Employees, Local 895; Scagnetti grievance*, March 28, 1980. O'Connor, McVey, Campeau — 5 pages. (57)

Interim dispute resolution by independent commissioner — breach of interim award giving rise to separate grievance. *Re Canadian Elevator Manufacturers Association and International Union of Elevator Constructors, Locals 90, 50 and 96*; April 9, 1980. Shime — 8 pages. (58)

Policy grievance improperly used to assert individual grievances — grievance dismissed. *Re Thomas Built Buses of Canada Limited and United Automobile Workers, Local 636; union grievance*, March 17, 1980. Majority: Palmer, Wright — 6 pages; dissent: Blackburn — 1 page. (59)

Timeliness — complaint re bargaining unit work not a continuing grievance; no waiver established; section 37(5a) applied; grievance arbitrable. *Re Algoma Contractors Limited and United Steelworkers of America, Local 4694; union grievance*, April 8, 1980. Majority: Hinngan, Schultz — 20 pages; dissent: Heller. (60)\*

### Holiday Pay

Qualifying days — grievors late and not reporting "at the start of operations . . . immediately following the holiday"; grievances dismissed. *Re Patons and Baldwins (Canada) Limited and Amalgamated Clothing and Textile Workers Union, Local 836; Keenan and Allen grievances*, March 31, 1980. Majority: Brunner, Sanderson — 9 pages; dissent: Seymour. (61)\*

### Holidays

Scheduling of lieu days — no restriction on employer's right to schedule; grievance dismissed. *Re St. Lawrence Lodge and Canadian Union of Public Employees, Local 2107; Shire grievance*, April 10, 1980. Majority: Scott, Belisle — 5 pages; dissent: Benest. (62)

### Illness

Return to work: report from employer's doctor required despite report from grievor's doctor — employer's concern genuine and reasonable; grievance dismissed. *Re Sunnybrook Hospital and Sunnybrook Hospital Employees' Union, Local 777; Abrams grievance*, April 21, 1980. Majority: Delisle, Reistetter — 11 pages; dissent: Wren (63)\*

**Management Rights**

Rule prohibiting card playing by hospital staff too broad — arbitrator amending rule. *Re Guelph General Hospital and Canadian Union of Public Employees, Local 57; union grievance*, March 28, 1980. Barton — 9 pages. (64) †

**Overtime**

Allocation — company entitled to assign work so as to avoid overtime — grievance dismissed. *Re Rio Algoma Limited and United Steelworkers of America, Local 5417; group grievance*, April 15, 1980. O'Shea — 8 pages. (65)

Carrying of telephone pager — employees entitled to overtime for responding to calls but not for simply being on call; grievance allowed in part. *Re Leco Industries Ltd. and Polyhouse Pkg. Ltd. and Oil, Chemical, and Atomic Workers International Union, Local 9-819; maintenance grievance*, April 23, 1980. Brunner — 10 pages. (66)\* †

Distribution — denial of opportunity for overtime work because of perceived attitudes found to be unfair; grievors compensated; grievances allowed. *Re Metropolitan Toronto Board of Commissioners of Police and Metropolitan Toronto Police Association; Cunningham, Bedard and Rogers grievances*, March 28, 1980. Saltman — 31 pages. (67)\*

**Premium Pay**

Entitlement: grievor leaving work on holiday after dispute with supervisor — not working on holiday when scheduled to do so; grievance dismissed. *Re Chromasco Limited and United Steelworkers of America, Local 4632; Gray grievance*, April 14, 1980. Abbott — 10 pages. (68)

Entitlement — work week altered during grievor's former days off: first day of new work week becoming normal work day; grievance dismissed. *Re Westcane Sugar Limited and Canadian Union of Operating Engineers and General Workers; Darrah grievance*, March 13, 1980. Majority: O'Connor, McGowan — 5 pages; dissent: Ranachan. (69)

Regular shift and overtime shift within same workday but not continuous — grievance allowed. *Re Kimberly-Clark of Canada Limited and Canadian Paperworkers Union, Local 307; Pace grievance*, April 3, 1980. Majority: Adams, Weisbach — 10 pages; dissent: Filion. (70)

Shift premium to be paid when shift commences prior to 7:00 a.m.; shift in issue commencing prior to that time and evidence of prior practice not sufficient to rebut clear wording of agreement; grievance allowed. *Re Toronto Harbour Commissioners and Toronto Harbour Commissioners Employees Union, Local 186; union grievance*, April 22, 1980. Shime, Sanderson, Whitney — 4 pages. (71)

**Procedure**

Interference with witness alleged — allegations unfounded. *Re Dominion Chain Co. and International Association of Machinists and Aerospace Workers; Shrubsole grievance*, March 31, 1980. Shime, Allaster, Jardine — 12 pages. (72)

**Promotion**

Qualifications — grievor not establishing sufficient ability; grievance dismissed. *Re United Steelworkers of America, District 6, and Office and Professional Employees International Union, Local 343; S. Kirby grievance*, March 26, 1980. Shime — 5 pages. (73)

Qualifications — other employee substantially better qualified; grievance dismissed. *Re Kingston, Corporation of City of, (Rideaucrest Home) and Canadian Union of Public Employees, Local 141; Carey grievance*, April 8, 1980. Fraser — 12 pages. (74)

Qualifications — promotion based on subjective impressions rather than objective evidence; grievance allowed. *Re Sunbeam Home and London and District Service Workers' Union, Local 220; Heer grievance*, March 26, 1980. R.J. Roberts, Sanderson, Switzman — 4 pages. (75)

Qualifications; grievor's accident record — not relevant in circumstances; grievance allowed. *Re Kendall Canada and United Steelworkers of America, Local 8505; Hutson grievance*, March 31, 1980. Majority: Shime, Martin — 6 pages; dissent: Robinson — 3 pages. (76)

Qualifications: training period — no training period required; grievance dismissed. *Re Welland Forge Ltd. and United Electrical, Radio and Machine Workers of America, Local 523; Bacon grievance*, April 23, 1980. Majority: Palmer, McKillop — 32 pages; dissent: Bosnich. (77)

Temporary promotion — "rate for the job" not to be interpreted as maximum rate; grievance dismissed. *Re Fairhaven Home for Senior Citizens and Canadian Union of Public Employees, Local 131; Davis grievance*, April 1, 1980. Majority: Palmer, Metcalfe — 9 pages; dissent: Taylor — 1 page. (78)\*

Transfer from one department to another but within same classification — not a promotion; grievance dismissed. *Re Scarborough General Hospital and Canadian Union of Public Employees, Local 1487; Skeete grievance*, March 12, 1980. Brunner, Levis, Lewis — 9 pages; addendum: Lewis — 1 page. (79)

**Recall**

Seniority relevant — reasonable efforts not made to recall grievor; grievance allowed. *Re Ontario Hydro and Hotel and Restaurant Employees and Bartenders International Union; Alexander grievance*, April 9, 1980. Brunner, McCuaig, Tate — 11 pages; addendum: Tate — 1 page. (80)

**Reporting Pay**

Return to work from work injury on floating holiday — grievor not directed to report for work and did not contact any foreman; not entitled to reporting pay; grievance dismissed. *Re Union Carbide Canada Limited and United Electrical, Radio and Machine Workers of America; Bines grievance*, April 7, 1980. Majority: Weatherill, Orsini — 6 pages; dissent: Bosnich — 4 pages. (81)

**Scheduling of Work**

Allocation of extra hours to be in accordance with seniority of employees — junior employee being given more hours while senior employees having their hours reduced; grievance allowed. *Re Molly and Me and Local 280, International Beverage Dispensers' and Bartenders' Union, of Hotel and Restaurant Employees' and Bartenders' International Union; policy grievance*, April 3, 1980. MacDowell, Rosenberg, Fagan — 12 pages. (82)

Changes in scheduling — changes caused employees to lose a day off, but not work overtime; grievance allowed in part. *Re Scarborough Centenary Hospital Association and Ontario Nurses' Association; policy grievance*, April 25, 1980. Majority: H.D. Brown, Symes — 11 pages; dissent: Shakes — 1 page; partial dissent: Symes — 1 page. (83)

New shift — company establishing that business requiring it to establish Sunday night shift; grievance allowed. *Re Steinberg Inc. (Miracle Food Mart Division) and Teamsters Union, Local 419; company policy grievance*, April 7, 1980. Majority: O'Shea, Burke — 15 pages; dissent: Bodkin. (84)

**Sick Pay**

Costs incurred to secure completion of claim form — preliminary to administration of plan; grievance dismissed. *Re Denison Mines Limited and United Steelworkers of America; Snow grievance*, April 11, 1980. O'Shea — 18 pages. (85)

**Transfer**

Improper transfer into part-time employment — determination of relief grievor entitled to under prior award. *Re Hillsdale Nursing Home and Boot and Shoe Workers' International Union; LaBrash grievance*, April 7, 1980. Palmer, Baker, Evans — 8 pages. (86)

**Union Rights**

Plant chairman to receive rate of pay equal to highest rate of pay in the bargaining unit — highest rate not including any premium payments; grievance dismissed. *Re DeHavilland Aircraft of Canada Ltd. and United Automobile Workers, Local 112; Spalding grievance*, April 30, 1980. H.D. Brown — 6 pages. (87)

**Vacation Pay**

Computation of entitlement — computation to be done on December 31st of each year, not anniversary date of employee; grievance dismissed. *Re Owen Sound General and Marine Hospital and Ontario Public Service Employees' Union; union grievance*, January 3, 1980. Majority: Beck, Howe — 8 pages; dissent: Cochrane — 2 pages. (88)\*

**Wages**

Implementation of across-the-board increases — employees in lower positions in new rate range with unequal individual benefits — grievance denied. *Re Jim Walter Building Products Limited and United Electrical, Radio and Machine Workers of America, Local 542; union grievance*, April 3, 1980. Brunner — 7 pages. (89)

Sharing of tips — employer unilaterally changing long-standing practice with effect of reducing income of certain employees, without consent; grievance allowed. *Re Westminster Hotel Ltd. and Hotel and Restaurant Employees' and Bartenders' International Union; Restaurant, Cafeteria and Tavern Employees' Union, Local 254; union grievance*, April 24, 1980. Majority: Sheppard, Tate — 19 pages; dissent: McKeown. (90)

**Work Assignment**

Non-bargaining unit employees assigned work — company's right to assign work not limited to work usually done by bargaining unit; grievance dismissed. *Re Kodak Canada Limited and Employees' Association of Kodak Canada; Bailey et al grievance*, April 18, 1980. H.D. Brown — 12 pages. (91)

The following awards in interest arbitrations under *The Hospital Labour Disputes Arbitration Act* were also filed with the Office of Arbitration during the month of April, 1980.

*Carefree Lodge and Ontario Nurses' Association*, Brent, Switzman — 14 pages; addendum: Switzman — 1 page; dissent: Binning — 3 pages.

*Mount Sinai Hospital, Toronto, and Service Employees Union, Local 204, (part-time employees)*, Samuels, Simpson, Geiger — 14 pages.

*Peterborough Civic Hospital and Ontario Public Service Employees Union, Local 342, (full-time technologists and laboratory assistants)*, Saltman, Drmaj — 14 pages; dissent: Millard — 10 pages.

*Red Lake Margaret Cochenour Memorial Hospital and Canadian Union of Public Employees, Local 1758, Lunney, Holt, Walsh* — 18 pages; addendum: Holt — 1 page.

*St. Lawrence Estate Nursing Home and Canadian Union of Public Employees, Local 1919, Ord, Walsh* — 8 pages; dissent: Wilson.

*Stormont, Dundas and Glengarry, United Counties of, (Glen-Stor-Dun Lodge) and Ontario Nurses' Association, (Supplementary Award)*, Ord, Wilson, Walsh — 2 pages.

*Stormont, Dundas and Glengarry, United Counties of, (Glen-Stor-Dun Lodge) and Canadian Union of Public Employees, Local 1792, (Supplement to Award)*, Ord, Wilson, Walsh — 3 pages.

*Sudbury General Hospital of the Immaculate Heart of Mary and Ontario Nurses' Association (full-time and part-time)*, Brent, Goudge — 8 pages; dissent in part: Valin — 2 pages.

*Windsor, Corporation of City of, (Huron Lodge) and Ontario Nurses' Association*, Brent, Mayne — 22 pages; addendum: Mayne — 1 page; dissent: Kavanaugh — 5 pages.

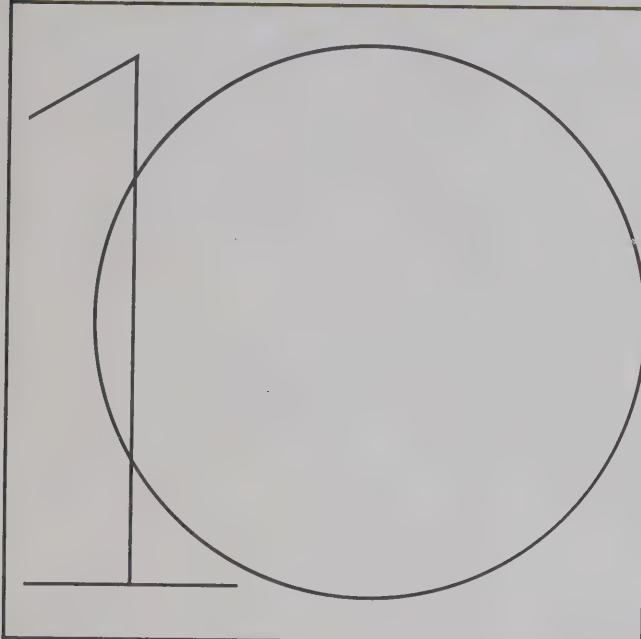
The awards may be seen at the Office of Arbitration, 400 University Avenue, 6th Floor, Toronto. Copies of awards may be obtained for a fee of 50 cents per page. Orders will be filled on receipt of an application and a cheque or money order payable to the Treasurer of Ontario for the applicable amount, which should be forwarded to: Cashier's Office, Ministry of Labour, 400 University Avenue, Toronto, Ontario, M7A 1T7

#### Filing Awards

The attention of chairmen of boards of arbitration and sole arbitrators is drawn to the regulations under *The Labour Relations Act* which require every arbitrator to file a copy of his award with the Office of Arbitration within ten days of issuing such award.

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# Monthly Bulletin



Office of Arbitration



Miss Jean M. Read, Director.

Ontario Ministry of Labour  
400 University Avenue, 6th Floor  
Toronto, Ontario  
M7A 1T7

Tel. (416) 965-5669

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T.E. Armstrong, QC, Deputy Minister

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#### Appointment of Arbitrators

Forms for requests for appointment of arbitrator under Section 37a of *The Labour Relations Act* are available on request, from the Office of Arbitration.

#### Awards

The following awards were filed with the Office of Arbitration during the month of May, 1980.

The summary was prepared at the Faculty of Law, Queen's University, under the supervision of C.G. Simmons, B.A., B.C.L., LL.M., and D.D. Carter, B.A., B.C.L., LL.B.

\* Indicates award to be reported in full or in part in *Labour Arbitration Cases*.

† Indicates award issued under section 37a of *The Labour Relations Act*.

#### Arbitrability

Expansion of initial grievance immediately prior to hearing — expansion improper. *Re Electrohome Limited and International Brotherhood of Electrical Workers, Local 2345; group grievance*, May 15, 1980. Rayner — 6 pages. (1)†

Intimidation on election day — employer threats of re-crimation for taking time off to vote; grievance arbitrable. *Re Do-Tan Tool and Gauge Limited and International Association of Machinists and Aerospace Workers; union grievance*, November 30, 1979. Majority: Godin, Tate — 4 pages; dissent: MacDermid. (2)

Section 37a; no collective agreement in force at time grievance arose — grievance not arbitrable under s. 37a. *Re City of Nanticoke and Canadian Union of Public Employees, Local 246; Decker grievance*, May 12, 1980. Barton — 7 pages. (3)†

#### Bereavement Pay

Entitlement — employee attending funeral of husband's brother, not immediate family; grievance denied. *Re The Board of Governors of the Hamilton Civic Hospitals and Canadian Union of Public Employees, Local 794; Goodbrand grievance*, May 13, 1980. Majority: O'Shea, Gordon — 9 pages; dissent: Acton — 1 page. (4)

#### Classification

Nature of academic appointment — grievors holding tenure stream appointments; grievance allowed. *Re York University and York University Faculty Association; grievance #19*; May 27, 1980. Majority: Beatty, Goudge — 50 pages; dissent: Hassell — 25 pages. (5)\*

Similar duties in two classifications alleged to warrant same rate — similarity not established; grievance dismissed. *Re Electrohome Limited and International Brotherhood of Electrical Workers, Local 2345; group grievance*, May 15, 1980. Rayner — 6 pages. (6)†

Teaching master — job duties not matching alleged classification; grievance dismissed. *Re The Ontario Council of Regents for Colleges of Applied Arts and Technology (St. Clair College) and The Ontario Public Service Employees Union; Webster grievance*, April 28, 1980. Majority: Brandt, Campbell — 15 pages; dissent: Perrin — 2 pages. (7)

Temporary assignment — job duty within two classifications; company entitled to classify employee in lowest rated classification performing job duty; grievance dismissed. *Re Dupont of Canada Limited, Maitland Works and Canadian Chemical Workers Union, Local 28; Howe grievance*, April 23, 1980. Majority: O'Shea, Binning — 21 pages; dissent: McIlwain. (8)

#### Clothing

Employer's obligation to supply clothing is unambiguous in collective agreement; grievance allowed. *Re Dominion Auto Transit Company and Teamsters, Chauffeurs, Warehousemen and Helpers Union, Local 880; union grievance*, May 23, 1980. Majority: Brent, Kobryn — 7 pages; dissent: McClelland — 2 pages. (9)

#### Damages

Calculation of amount — effect of UIC and vacation pay. *Re Abex Industries Ltd. Dominion Brake Shoe Division and International Chemical Workers Union, Local 175; Terryberry grievance*, April 30, 1980. H.D. Brown, Everson, Sanderson — 6 pages. (10)

Failure to honour settlement — employer ordered to honour agreement. *Re Glen Taxi (1978) and Ontario Taxi Association; H. Napier, E. Napier grievances*, April 29, 1980. Teplitsky, McGowan, Roscoe — 3 pages. (11)

Scope of Board's remedial jurisdiction — no jurisdiction to deal with incidents subsequent to filing of grievance. *Re Dupont of Canada Ltd. and Canadian Chemical Workers Union, Local 28; Dillabough grievance*, May 22, 1980. Kennedy, McIlwain, Binning — 7 pages. (12)\*

#### Demotion

Transfer to another school — grievor not subject to diminution in status or pay; grievance dismissed. *Re Conseil des Ecoles Catholiques de Prescott-Russel and L'Association des Educateurs Franco-Ontarien; Leblanc grievance*, February 18, 1980. Majority: Godin, Richard — 12 pages; did not concur: Gauthier. (13)

#### Discharge

Absence from work without permission — grievor on informal "probation"; discharge not unreasonable; grievance dismissed. *Re Sheraton Limited (The Sheraton Centre) and The Hotel and Club Employees' Union, Local 299; Martin grievance*, April 28, 1980. Majority: Brunner, McKillop — 7 pages; dissent: Tate — 2 pages. (14)

Absence without leave — waiting for repair of vehicle out of town not "unavoidable cause"; grievance dismissed. *Re Dominion Auto Accessories Limited and United Automobile Workers, Locals 195 and 252; Snider grievance*, April 25, 1980. Palmer — 6 pages. (15)

Absenteeism — excessive innocent absenteeism; potential for improvement indicated; conditional reinstatement with partial compensation. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 414; Varro grievance*, May 5, 1980. Majority: Kennedy, Spaxman — 12 pages; dissent: Sargeant — 6 pages. (16)

Absenteeism — grievor producing doctor's note which the company found vague and unsatisfactory — culminating incident; grievance dismissed. *Re The Steel Company of Canada Limited, Hilton Works and United Steelworkers of America, Local 1005; LeDuc grievance*, May 13, 1980. Majority: Barton, Storie — 10 pages; did not concur: Pudge. (17)

Aggressive conduct on employer's premises involving the use of a dangerous weapon — grievance dismissed. *Re Vaunclair Purveyors Co. Ltd. and Canadian Food and Allied Workers, Local Union 633, Chartered by the Amalgamated Meat Cutters and Butcher Workmen of North America; Gastis grievance*, May 13, 1980. Majority: Brunner, Sanderson — 11 pages; dissent: Simon — 1 page. (18)

Assault on foreman — attack a momentary flare up, precipitated by employee's family and emotional problems; grievance allowed. *Re Molsons Brewery (Ontario) Limited and Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers, Local 304; Raill grievance*, April 18, 1980. Brunner — 14 pages. (19)

Breach of trust — grievor extorting money from public for work done for employer; grievance dismissed. *Re City of Toronto, Corporation of and Toronto Civic Employees Union, C.U.P.E., Local 43; Fengler grievance*, May 27, 1980. Beatty, Paulin, Tate — 7 pages. (20)

Consumption of alcoholic beverages during work hours established on facts — grievances dismissed. *Re Pepsi-Cola Canada Ltd., and Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers; March, Selway, Smith and Ozolin grievances*, May 7, 1980. Majority: Burkett, Murray — 15 pages; dissent: Hayes — 2 pages. (21)

Consumption of alcohol prior to reporting for work — reinstatement subject to examination by doctor to ensure grievor's ability to perform duties. *Re Lincoln Place Nursing Home and Service Employees Union, Local 204; Vasiloff grievance*, May 12, 1980. Kennedy, Sargeant, Simon — 16 pages. (22)

Culminating incident — absence from work station and bad work record justifying dismissal; grievance dismissed. *Re Motor Wheel Corporation of Canada Ltd. and United Automobile Workers, Local 127; Rapanotti grievance*, May 1, 1980. Palmer — 9 pages. (23)\*

Culminating incident — failure to complete assigned work due to lack of effort — grievance dismissed. *Re Ford Motor Company of Canada Limited and United Automobile Workers, Local 707; Marelja grievance*, May 22, 1980. Palmer — 15 pages. (24)

Culminating incident; unjustified absence plus bad work record sufficient for discharge — grievance dismissed. *Re MacDonald's Consolidated Limited and Teamsters, Local 419; Green grievance*, February 13, 1980. Majority: Rayner, Riggs — 10 pages; dissent: Petryshen. (25)

Dishonesty — offence pre-meditated; grievance dismissed. *Re Beatrice Foods (Ontario) Limited and Retail, Wholesale and Department Store Union, Local 440; Van Luven grievance*, May 5, 1980. Majority: Hinngan, MacDonald — 8 pages; dissent: Barron — 2 pages. (26)

Dishonesty: grievor allegedly tampered with equipment to falsify production rate — company failing to discharge onus; reinstatement with compensation. *Re Kelson Spring Products Limited and United Steelworkers of America, Local 7291; Magnacca grievance*, May 1, 1980. Majority: O'Shea, Gerard — 15 pages; dissent: Bertuzzi — 5 pages. (27)

Disregard for the law — grievors continuing misconduct incompatible with nature of employer; grievance dismissed. *Re Metropolitan Board of Commissioners of Police and Metropolitan Toronto Police Association; Best grievance*, April 30, 1980. O'Shea — 19 pages. (28)\*

Failure to comply with company rule alleged — grievor's explanation was uncontradicted at hearing by employer; grievance allowed. *Re Skyline Hotels Limited — The Old Mill Restaurant and Hotel and Club Employees' Union Local 299 of Hotel and Restaurant Employees' and Bartenders' International Union; Troyano grievance*, May 15, 1980. Majority: Boscariol, Tate — 7 pages; dissent: Healy — 3 pages. (29)

Impaired driving while on job — reinstatement of job not involving driving. *Re Molson's Brewery (Ontario) Limited and Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers, Local 304; Bentley grievance*, May 12, 1980. Arthurs — 7 pages. (30)

Incompetence alleged: grievor involved in two accidents — grievor lacks experience for job duties; conditional reinstatement with compensation. *Re Husband Transport Limited and Teamsters Union, Local 141; Johnson grievance*, April 30, 1980. Majority: Rayner, Kobryn — 14 pages; dissent: Peel — 2 pages. (31)\*

Insubordination; refusal of a direct order, obscenity to supervisor and bad work record sufficient for discharge; grievance denied. *Re Howe Richardson Scale Company and International Association of Machinists and Aerospace Workers; Cook grievance*, May 16, 1980. Baum — 9 pages. (32)†

Insubordination; refusal to report for work — discharge for insubordination lessened to reinstatement with 50% of lost pay. *Re Mastico Industries Ltd. and United Automobile Workers, Local 1859; Thum grievance*, May 20, 1980. Gibson — 11 pages. (33)

Possession of alcohol — no proof liquor was grievor's or that he had been drinking; grievance allowed. *Re Mastico Industries Ltd. and United Automobile Workers, Local 1859; Rabb grievance*, May 15, 1980. Gibson — 7 pages. (34)

Possession of alcohol — no proof that alcohol belonged to grievor or that he had been drinking; grievance allowed. *Re Mastico Industries Ltd. and United Automobile Workers, Local 1859; Pocius grievance*, May 15, 1980. Gibson — 8 pages. (35)

Quit alleged — employer meeting onus of proof by establishing that resignation voluntary; grievance dismissed. *Re Ottawa Civil Service Recreational Association and Canadian Brotherhood of Railway, Transport and General Workers; Hamel grievance*, May 12, 1980. Duchesneau-McLachlan — 13 pages. (36)

Quit alleged; no intention to quit found; reinstatement with compensation. *Re Accurcast Die Casting Limited and International Molders and Allied Workers Union, Local 93; Johnston grievance*, May 14, 1980. Burkett — 16 pages. (37)

Theft — grievor's denial alone not sufficient to prevent employer from satisfying burden of proof; grievance dismissed. *Re Algoma Steel Corporation Limited and United Steelworkers of America, Local 2251; Devoe grievance*, May 12, 1980. Majority: Palmer, Morley — 9 pages; dissent: Keck — 2 pages. (38)

Theft: grievor accused of misappropriating company property valued at between \$1,800 and \$3,500 — grievor's acquittal in criminal proceedings not applicable in grievance procedure; grievance dismissed. *Re Pullman Trailmobile Canada Limited and Local 397, United Automobile Workers; DeLottinville grievance*, May 8, 1980. Rayner — 14 pages. (39)

Theft of company materials — articles taken of little value; grievance allowed, suspension substituted. *Re Genaire (1961) Limited and United Automobile Workers, Local 199; Burgio grievance*, March 31, 1980. J.L. Roberts — 11 pages. (40)

Unsatisfactory work performance — just cause established; grievance dismissed. *Re Chrysler Canada Ltd. and United Automobile Workers, Local 1285; Cowie grievance*, May 21, 1980. O'Shea — 34 pages. (41)

Violation of plant rules and regulations — grievance denied. *Re Wabco Ltd. and United Electrical, Radio and Machine Workers of America, Local 558; Pontin grievance*, May 1, 1980. Majority: O'Shea, Sanderson — 16 pages; dissent: Russell — 2 pages. (42)

Work injury grossly exaggerated — substantial suspension to replace discharge. *Re Wallace-Barnes Co. Ltd. and United Steelworkers of America, Local 8761; Eden grievance*, May 27, 1980. Saltman, Davis, Simpson — 21 pages. (43)

Work performance considered unsatisfactory — presence of more qualified employees not necessarily evidence that other employees not meeting reasonable standards and requirements of jobs; grievance allowed. *Re Toronto Star Newspapers Ltd. and Southern Ontario Newspaper Guild; Taylor grievance*, May 8, 1980. Prichard — 27 pages. (44)

#### Discipline

Absence from job and card playing — Wrightson and Lively, reduced penalties; Dumond grievance dismissed. *Re Steel Co. of Canada Ltd., Hilton Works and United Steelworkers of America, Local 1005; Wrightson, Lively and Dumond grievances*, April 21, 1980. McLaren, Brady, MacPherson — 14 pages. (45)

Absence from work area without foreman's permission — established on the facts; grievances dismissed. *Re Steel Co. of Canada Ltd., Hilton Works and United Steelworkers of America, Local 1005; Chatelain and Mamone grievances*, May 2, 1980. McLaren, Brady, Turk — 8 pages. (46)

Abuse of airline pass privileges — length of suspension of privilege excessive; grievance allowed in part. *Re Air Canada and Canadian Air Line Employees' Association; Knight grievance*, April 30, 1980. Simmons — 17 pages. (47)

Assault on fellow employee — grievance dismissed. *Re Steel Co. of Canada Ltd., Hilton Works and United Steelworkers of America, Local 1005; Cooke grievance*, May 20, 1980. Majority: McLaren, Morley — 11 pages; dissent: MacPherson — 3 pages. (48)

Breach of hospital policy alleged — policy not established; grievance allowed. *Re Windsor Western Hospital Centre Inc. (I.O.D.E. Unit) and Ontario Nurses' Association; Warner and Sheffiel grievance*, May 21, 1980. Majority: Palmer, Paliare — 12 pages; dissent: Bartlet — 5 pages. (49)

Failure to produce satisfactory medical certificate — no insubordination; grievance allowed. *Re J.H. Normick Inc. and Lumber and Sawmill Workers Union; Crickard grievance*, May 5, 1980. Teplitsky, Valin, Fyshe — 4 pages. (50)

Insubordination — decided on onus of proof; grievance allowed. *Re Coca-Cola Ltd. and Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers; Amez grievance*, May 9, 1980. Shime — 6 pages. (51)

Insubordination and abusive language alleged and proven — grievance dismissed. *Re Dominion Stores Ltd. and Retail, Wholesale and Department Store Union, Local 414; Pender grievance*, May 2, 1980. Majority: Weatherill, White — 9 pages; dissent: Spaxman. (52)

Insubordination: failure to follow directions — incident not proven; grievance allowed. *Re Sheraton Limited (The Sheraton Centre) and The Hotel and Club Employees' Union, Local 299; Cheong Lee grievance*, March 14, 1980. Brunner, MacDermid, Tate — 10 pages. (53)\*

Insubordination: foul and abusive language — grievor's past record considered; grievance dismissed. *Re Toronto Star Newspapers Limited and Southern Ontario Newspaper Guild; McCarty grievance*, May 22, 1980. Prichard — 10 pages. (54)

Insubordination; refusal to comply with supervisor's instructions — "work now, grieve later" principle affirmed; grievance dismissed. *Re Canadian Ohio Brass Company Limited and Teamsters, Chemical, Energy and Allied Workers, Local 1345; Klasson grievance*, May 13, 1980. Welling — 8 pages. (55)

Insubordination — refusal to work overtime — no direct order given; grievance allowed. *Re City of Toronto, Corporation of and Toronto Civic Employees Union, Local 43; Grimshaw grievance*, May 5, 1980. Majority: Brent, Tate — 19 pages; addendum: Tate — 1 page; dissent: Paulin — 4 pages. (56)

Leaving work early, although signing out for regular time — required work completed; warning substituted. *Re City of Toronto, Corporation of and Canadian Union of Public Employees, Local 43; Watral grievance*, March 14, 1980. Lunney, Tate, Paulin — 8 pages. (57)

Negligence resulting in industrial accident — grievance dismissed. *Re Steel Co. of Canada Ltd., Hilton Works and United Steelworkers of America, Local 1005; Runchey grievance*, May 8, 1980. Majority: Welling, Beresford — 12 pages; dissent: Elder — 2 pages. (58)

Withholding of company funds — innocent explanation: grievor not blameless because explanation not given to supervisor; grievance allowed in part. *Re Toronto Star Newspapers Limited and Southern Ontario Newspaper Guild; McCarty grievance*, May 14, 1980. Prichard — 14 pages. (59)

Work performance unsatisfactory — previous warnings given; grievance dismissed. *Re Slater Products Division of Slater Steel Industries Ltd., and United Steelworkers of America; Local 3505; Sullivan grievance*, May 9, 1980. Dunn — 4 pages. (60)

Unsafe work procedure — onus on employer to proclaim safety rule it wishes to enforce; grievance allowed. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 414; Anderson grievance*, May 12, 1980. Majority: H.D. Brown, Spaxman — 16 pages; dissent: White — 3 pages. (61)

Unsatisfactory work performance resulting in safety hazard — previous record good; three-day suspension reduced to one day. *Re Noranda Mines Ltd., and Canadian Union of Base Metal Workers; Barten grievance*, May 30, 1980. Rayner — 10 pages. (62)

#### Grievance Procedure

Timeliness — extension under s. 37(5a) of Labour Relations Act requested — no reasonable grounds shown; grievance dismissed. *Re Holland Hitch of Canada Limited and United Automobile Workers, Local 636; Scott grievance*, April 23, 1980. Rayner — 5 pages. (63)

Union grievance alleging improper payment to summer students — claim for wages improper; claim for declaration proper. *Re Town of Mattawa, Corporation of and Canadian Union of Public Employees, Local 1465; union grievance*, May 28, 1980. Godin, Belanger, Valin — 8 pages. (64)

Union grievance relating to hiring of non-member of association — properly brought as union grievance. *Re Le Conseil Des Ecoles Separées Catholiques D'Ottawa and L'Association Des Enseignants Franco-Ontarien Unite Régionale D'Ottawa; union grievance*, April 1, 1980. Majority: Roach, Belanger — 8 pages; dissent: Mercier — 3 pages. (65)

Waiver alleged — waiver not proven with clear and cogent evidence; grievance allowed. *Re Spar Aerospace Products Limited and United Automobile Workers, Local 112; policy grievance*, May 28, 1980. Rayner — 5 pages. (66)

#### Health and Safety

Safety equipment — furnishing of safety shoes by company part of general plant safety provision; no crediting for shoes purchased for non-employment related activities; grievance dismissed. *Re Chromasco Limited and United Steelworkers of America, Local 4632; policy grievance*, May 9, 1980. Hinnegan — 6 pages. (67)

Safety equipment — no proof put forward by union to show equipment unsafe; grievance dismissed. *Re Steel Company of Canada Ltd., Hilton Works and United Steelworkers of America, Local 1005; Kushner grievance*, May 8, 1980. McLaren, Davis, Storie — 7 pages. (68)\*

#### Holidays

"Civic" holiday — meaning local civic holiday proclaimed under Municipal Act, s. 355; grievance dismissed. *Re Kapuskasing District Roman Catholic Separate School Board and Canadian Union of Public Employees, Local 1421; Grzela grievance*, May 28, 1980. Majority: Godin, Evans — 4 pages; dissent: Lebel. (69)

#### Hours of Work

Guarantee: flight attendant electing not to work delayed flight — claims entitled to payment under collective agreement; grievance dismissed. *Re Air Canada and Canadian Air Line Flight Attendants Association; Chevalier grievance*, May 9, 1980. Shime — 9 pages. (70)

#### Job Evaluation

Technologist — claimed supervisory functions instructional in nature, grievance dismissed. *Re Regional Municipality of Sudbury and Canadian Union of Public Employees, Local 207; union grievance*, May 5, 1980. Hinnegan — 15 pages. (71)

#### Job Posting

Lateral transfer — subject to job posting procedures; employer obliged to consider bargaining unit employees before hiring from outside; grievance allowed. *Re Scarborough General Hospital and Canadian Union of Public Employees, Local 1487; Capasso grievance*, May 21, 1980. Brent, Lewis — 12 pages. (72)\*

#### Job Vacancy

Hiring of outside workers during lay-off — permitted where laid-off employees not qualified for job; grievance dismissed. *Re P.L. Robertson Manufacturing, Division of Procor Ltd. and United Steelworkers of America, Local 4970; union grievance*, May 8, 1980. O'Shea, Maguire, Binning — 12 pages. (73)

Hiring of teacher from outside association — other teachers not qualified at time; grievance dismissed. *Re Le Conseil Des Ecoles Separées Catholiques D'Ottawa and L'Association Des Enseignants Franco-Ontarien, Unite Régionale D'Ottawa; union grievance*, April 11, 1980. Majority: Roach, Mercier — 14 pages; dissent: Belanger — 7 pages. (74)

#### Lay-Off

Apprentice — entitled to seniority for purposes of lay-off; grievance allowed. *Re McCombe International Trucks Ltd. and International Association of Machinists and Aerospace Workers, Local 2288; Glivar grievance*, May 16, 1980. Teplitsky — 6 pages. (75)

Bumping rights — collective agreement giving no right to bump on basis of shift preference; grievance dismissed. *Re Foster Wheeler Limited and United Steelworkers of America, Local 6519; Coutts grievance*, April 30, 1980. O'Shea — 12 pages. (76)

Employees sent home for balance of shift when foreign objects found in food processing machines — constituting emergency; grievance dismissed. *Re Canadian Home Products Ltd. and Canadian Food and Allied Workers, Local P767, District 15; grievances #20 and 21*, May 16, 1980. Shime, Merrett, Dayman — 5 pages. (77)

Transfer because of lack of work — constituting lay-off even though no employees let out of plant; grievance dismissed. *Re Kirsch of Canada Ltd., and United Automobile Workers, Local 636; union grievance*, May 30, 1980. Palmer — 6 pages. (78)

#### **Maternity Leave**

Accrual of benefits — employer policy incorporated into collective agreement preventing accrual of vacation benefits during leave; grievance dismissed. *Re Board of Education for the City of Toronto and Canadian Union of Public Employees, Local 1325; Duso grievance*, May 12, 1980. H.D. Brown, Furlong, Fagan — 7 pages. (79)

#### **Overtime**

Distribution — agreement not limiting overtime assignments to certain job classifications; grievance dismissed. *Re Reynolds Aluminum Company of Canada Limited, Building Material Division and International Molders and Allied Workers Union, Local 28; Hothi grievance*, May 20, 1980. H.D. Brown — 11 pages. (80)

Failure to properly notify employees of overtime opportunities — employees electing to not work overtime; grievance dismissed. *Re Steinberg Inc. and Teamsters, Local Union 419; group grievance*, May 7, 1980. Majority: Burkett, Burke — 14 pages; partial dissent: White — 1 page. (81)

Remedy where improper distribution — "in kind" remedy not appropriate. *Re Sherman Mine, Cliffs of Canada Ltd., Manager, and United Steelworkers of America; 13 pit maintenance employees grievance*, April 28, 1980. Brunner — 7 pages. (82)\*

#### **Promotion**

Appropriate remedy where failure of company to allow grievor to apply — matter remitted back to company to determine which, as between grievor and incumbent, entitled to promotion. *Re Metropolitan Toronto, Municipality of and Canadian Union of Public Employees, Tam grievance*, May 28, 1980. Teplitsky, Tate, Moran — 6 pages. (83)

Determination of qualifications — skills additional to qualifications in schedule required for higher level jobs; grievance dismissed. *Re Allied Chemical Canada, Limited and United Automobile Workers, Local 89; policy grievance*, May 28, 1980. Brandt — 10 pages. (84)

Evaluation of candidates — supervisor familiar with candidates work not obligated to use tests; grievance dismissed. *Re Fanshawe College and Ontario Public Service Employees Union; Bates grievance*, May 26, 1980. Majority: H.D. Brown, Mason — 13 pages; dissent: Cochrane. (85)

Qualification — employer's interview not reasonable within requirement of agreement; grievance allowed. *Re Metropolitan Toronto, Municipality of and Canadian Union of Public Employees, Toronto Civic Employees Union, Local 43; Cicciarello grievance*, May 20, 1980. Majority: McCulloch, Tate — 14 pages; dissent: Murray — 4 pages. (86)

Qualifications — grievor having Grade 13 equivalent; grievance allowed. *Re City of London, Corporation of and Canadian Union of Public Employees, Local 101; Blenkhorn grievance*, April 28, 1980. Majority: Brandt, Lewis — 24 pages; dissent: Noble — 9 pages. (87)

Qualifications — grievor not as qualified; grievance dismissed. *Re Borough of York, Corporation of and Canadian Union of Public Employees, Local 10; Fazio grievance*, April 18, 1980. Majority: Verity, Paulin — 7 pages; addendum: Lewis — 1 page. (88)

Qualifications — grievor not qualified for posted vacancy; grievance dismissed. *Re Canadian Vinyl Fabrics, Stauffer Chemical Company of Canada Limited and United Steelworkers of America, Local 13391; Woolfrey grievance*, May 9, 1980. O'Shea — 18 pages. (89)

Qualifications — grievor's qualifications not equal — grievance dismissed. *Re Stormont, Dundas and Glengarry County Roman Catholic School Board and Canadian Union of Public Employees, Local 1834; Theoret grievance*, April 22, 1980. Roach — 9 pages. (90)

Qualifications — grievor unable to perform all tasks required for position sought; grievance dismissed. *Re Canadian Broadcasting Corporation and National Association of Broadcast Employees and Technicians; Gregory grievance*, May 6, 1980. O'Shea — 40 pages. (91)\*

Qualifications — once qualification of individual held to be equal, duty of Board to determine whether decision of employer was arbitrary or discriminatory; grievance dismissed. *Re Regional Municipality of Peel and International Brotherhood of Electrical Workers, Local 636; Cimino grievance*, May 15, 1980. Majority: J.L. Roberts, Black — 22 pages; dissent: Heslinga — 2 pages. (92)

Qualifications — one test assessment not reasonable; grievor having sufficient skills and should perform adequately with practice; grievance allowed. *Re City of London, Corporation of and Canadian Union of Public Employees, Local 101; Sharpe grievance*, March 12, 1980. Majority: H.D. Brown, Browne — 15 pages; dissent: Noble — 9 pages. (93)

Qualifications — previous arbitration award ordering employer to take related experience into account; employer reconsidering applicant and again determining that grievor did not have the necessary experience — decision was fair and reasonable; grievance dismissed. *Re The Toronto Hydro Electric System and Canadian Union of Public Employees, Local 1, Kapalowski grievance*, May 15, 1980. Brunner — 8 pages. (94)

Test standard reasonable — company test establishing grievor did not have requisite skills for position; grievance dismissed. *Re McDonnell Douglas Canada Limited and United Automobile Workers, Local 673; Walker grievance*, May 7, 1980. H.D. Brown — 14 pages. (95)

**Recall**

Failure to recall after legal strike — decrease in business caused disputed job to disappear; duties previously performed by another classification; grievance dismissed. *Re Jones Transport Company Limited and Teamsters Union, Local 879; Murdy grievance*, May 7, 1980. Majority: Burkett, Sargeant — 13 pages; dissent: Hurd. (96)

**Redundancy**

Appropriate procedure — release of teachers not tied to particular date; exemption from seniority provision for special functions applicable to probationary teachers. *Re CFB Kingston Board of Education and Federation of Women Teachers' Association of Ontario, Ontario Public School Men Teachers' Federation, Association des Enseignants Franco-Ontariens; policy grievance*, May 26, 1980. Carter, Minok, Posen — 9 pages. (97)

**Retirement**

Portability of retirement gratuity — s. 155 of the *Education Act* not allowing transfer of retirement gratuities between boards; grievances dismissed. *Re Halton Board of Education and Ontario Secondary School Teachers' Federation; Morris et al grievances*, May 6, 1980. Majority: Kennedy, MacDermid — 10 pages; dissent: Posen — 3 pages. (98)

**Scheduling of Work**

Entitlement to steady days — employer not obligated to provide preferred shift; because of seniority; grievance dismissed. *Re Metropolitan Toronto, Municipality of and Metropolitan Toronto Civic Employees' Union, Local 43; Basta grievance*, May 5, 1980. Majority: Kennedy, Beresford — 10 pages; dissent: Tate — 3 pages. (99)\*

**Seniority**

Amalgamation of businesses — no obligation to protect seniority rights beyond the bargaining unit; grievance dismissed. *Re Flanagan Delivery Service Limited and Teamsters, Chauffeurs, Warehousemen and Helpers, Local 141; McEachern et al grievance*, May 12, 1980. Brent, Linder, Kobrym — 10 pages. (100)

Calculation — effect of discharge and rehiring; grievance dismissed. *Re Steel Co. of Canada Ltd., Hilton Works and United Steelworkers of America, Local 1005; Sanelli grievance*, May 1, 1980. Palmer, Davis, Murray — 7 pages. (101)

Retroactivity of seniority clause — new collective agreement expanding crediting of seniority to hiring date; grievance not estopped by previous seniority clause; grievance allowed. *Re City of Renfrew, Corporation of and Canadian Union of Public Employees, Local 1508; Dodd grievance*, December 11, 1979. Majority: Scott, Newell — 8 pages; dissent: Gillespie. (102)

**Sick Pay**

Doctor's fee for completing medical statement; statement not part of indemnity plan — grievance dismissed. *Re Fleet Industries and International Association of Machinists and Aerospace Workers, Local 171; union grievance*, May 21, 1980. Majority: O'Shea, Marchand — 14 pages; dissent: Carter — 1 page. (103)\*

Vacation — first week of illness overlapping — employees not entitled to claim both vacation and sick pay; grievance dismissed. *Re Robertson Building Systems Ltd. and International Association of Bridge, Structural and Ornamental Iron Workers, Local 734; Dastous grievance*, May 8, 1980. Majority: Hinnegan, Harris — 11 pages; dissent: Bosnich. (104)

**Transfer**

Work assignment changed — constituting transfer as new job in different classification; grievance allowed. *Re The Regional Municipality of Waterloo (Sunnyside Home) and London and District Service Workers' Union, Local 220; Briski grievance*, May 15, 1980. Majority: R.J. Roberts, Switzman — 7 pages; dissent: Noble — 4 pages. (105)

**Union Security**

Failure to remit union dues in respect of three employees — employer ordered to comply with collective agreement and remit dues; grievance allowed. *Re Perfect Metro Cleaners and Labourers' International Union of North America, Local 183; union grievance*, May 8, 1980. Brunner — 5 pages. (106)

Revocation of check-off alleged — employee rights; petition cannot be taken as implied revocation of dues check-off authorization; Board not satisfied as to presence of subjective mental element on part of petition signatories; grievance allowed. *Re Pascal Stores Limited and Pascal Employees' Association of Ottawa; union grievance*, May 12, 1980. Scott — 9 pages. (107)

**Vacations**

Scheduled immediately prior to grievor's retirement — employer acting unfairly; grievance allowed. *Re City of London, Corporation of and Canadian Union of Public Employees, Local 101; Zerebecki grievance*, May 26, 1980. Majority: H.D. Brown, Pennesi — 14 pages; dissent: Miners — 1 page. (108)\*

**Vacation Pay**

Percentage of entitlement — collective agreement not supplemented by *Industrial Standards Act*; grievance denied. *Re Hudson Sportswear Manufacturing Co. Ltd. and United Garment Workers of America, Local 253; union grievance*, April 8, 1980. Majority: Brunner, Switzer — 11 pages; dissent: Ballantyne — 7 pages. (109)

**Wages**

Appropriate rate — company position accepted on final-offer-selection. *Re Canada Packers Ltd. and Canadian Food and Allied Workers; job rate referral*, May 7, 1980. Majority: Brent, Williamson — 18 pages; dissent: Beaulieu — 2 pages. (110)

Responsibility pay — nurse acting as head on weekends entitled to head nurse's pay rate; grievance allowed. *Re La Verendrye General Hospital (Fort Frances) Inc. and Ontario Nurses' Association; Larocque grievance*, May 20, 1980. Majority: H.D. Brown, Symes — 14 pages; dissent: Murray — 6 pages. (111)

Wage progression — applicable to part-time bargaining unit; grievance allowed. *Re Plummer Memorial Public Hospital and Service Employees' International Union, Local 268; union grievance*, May 1, 1980. Kennedy — 17 pages. (112)

**Welfare Plans**

Arbitrability — issue between union and insurer not employer; grievance dismissed. *Re General Signal and United Steelworkers of America; Anderson grievance*, May 28, 1980. Rayner — 7 pages. (113)

Failure to make contributions to employee welfare and pension funds as required by collective agreement; employer ordered to pay the proper amounts; grievances allowed. *Re Perfect Metro Cleaners and Labourers' International Union of North America, Local 183; Danilidis, Karvounis and Brewett grievances*. See (106), *supra*. (114)

Reorganization of benefit plan — money from previous insurance carrier divided according to employer and employee portion of contribution; employee portion applied to new benefit plan; interim procedural order. *Re Canadian Broadcasting Corporation and Canadian Union of Public Employees, Broadcast Division; union grievances*, May 26, 1980. Arthurs — 18 pages. (115)

**Work Assignment**

New supervisory position created with bargaining unit duties — found to be in breach of job posting provision or prohibition against supervisor's performing bargaining unit work; employer orders to desist assignment of bargaining unit duties. *Re Certified Automotive Products (Central) Limited and United Steelworkers of America, Local 14831; union grievance*, May 26, 1980. Hinnegan — 7 pages. (116)

Non-bargaining unit employees assigned certain work — change of method of production resulting in new task in production process which bargaining unit employees had never performed; grievance dismissed. *Re Shaw-Almex Industries Limited and United Steelworkers of America; policy grievance*, May 14, 1980. O'Shea — 11 pages. (117)

The following awards in interest arbitrations under *The Hospital Labour Disputes Arbitration Act* were also filed with the Office of Arbitration during the month of May, 1980.

*Arnprior and District Memorial Hospital and Canadian Union of Public Employees, Local 2198*, H.D. Brown, Carrier, Switzman — 9 pages.

*Laurentian Hospital and Canadian Union of Public Employees, Local 161, (part-time)*, Saltman, Harris — 9 pages; partial dissent: Pharand — 1 page.

*Mount Sinai Hospital and Service Employees Union, Local 204 (office and clerical employees)* (Supplementary Interpretation), Samuels, Hubert — 3 pages; dissent: Wren — 3 pages.

*North York General Hospital and Ontario Nurses' Association (full-time and part-time)*, Brent, Belford, Walsh — 12 pages.

*Riverdale Hospital and Toronto Civic Employees Union, Local 43, Canadian Union of Public Employees (maintenance employees)*, Beck, Riggs — 19 pages; dissent: Switzman — 2 pages.

*Stormont, Dundas and Glengarry, United Counties of, (Glen-Stor-Dun Lodge), and Ontario Nurses' Association, (Supplement to Award)*, Ord, Wilson, Walsh — 3 pages.

*Versa-Care Centre of Owen Sound owned and operated by Versa-Care Centres of Ontario Ltd. and Ontario Nurses' Association*, Waisglass, Walsh, Stewart — 5 pages.

*West Nipissing Home for the Aged (Au Chateau) and Canadian Union of Public Employees, Local 896*, H.D. Brown, Buckland, Pharand — 8 pages.

*Windsor Hospitals — Windsor Western Hospital Centre (I.O.D.E. Unit), Metropolitan General Hospital, Salvation Army Grace Hospital, Religious Hospitallers of Hotel Dieu of St. Joseph of The Diocese of London, and Service Employees Union, Local 210 (registered technologists)*, Kennedy, Lewis, Burnell — 10 pages.

The awards may be seen at the Office of Arbitration, 400 University Avenue, 6th Floor, Toronto. Copies of awards may be obtained for a fee of 50 cents per page. Orders will be filled on receipt of an application and a cheque or money order payable to the Treasurer of Ontario for the applicable amount, which should be forwarded to: Cashier's Office, Ministry of Labour, 400 University Avenue, Toronto, Ontario, M7A 1T7.

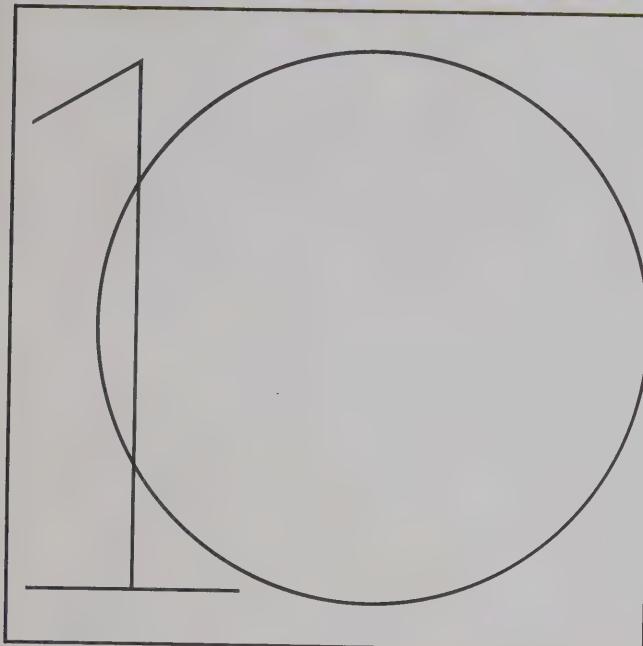
**Filing Awards**

The attention of chairmen of boards of arbitration and sole arbitrators is drawn to the regulations under *The Labour Relations Act* which require every arbitrator to file a copy of his award with the Office of Arbitration within ten days of issuing such award.

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# Monthly Bulletin



## Office of Arbitration

Miss Jean M. Read, Director.



Ontario

Ontario Ministry of Labour  
400 University Avenue, 6th Floor  
Toronto, Ontario  
M7A 1T7  
Tel. (416) 965-5669

Hon. Robert Elgie, M.D., Minister  
T.E. Armstrong, QC, Deputy Minister

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Office of Arbitration as a service to  
persons involved in labour-management  
arbitrations.

### Appointment of Arbitrators

Forms for requests for appointment of arbitrator under Section 37a of *The Labour Relations Act* are available on request, from the Office of Arbitration.

### Arbitrators

The following person is included on our list of fully approved arbitrators:

Mr. W. Gerald Punnett, Barrister & Solicitor, 191 Norfolk Street, P.O. Box 431, Guelph, Ontario, N1H 6K5; telephone (519) 821-5840.

### Change of Address

The following change should be noted, effective immediately:

Mr. Stephen R. Gibson, Nu-West Centre, 80 Bloor Street West, 16th Floor, Toronto, Ontario, M5S 2V1; telephone (416) 923-9503.

### Awards

The following awards were filed with the Office of Arbitration during the month of June, 1980.

The summary was prepared at the Faculty of Law, Queen's University, under the supervision of C.G. Simmons, B.A., B.C.L., LL.M., and D.D. Carter, B.A., B.C.L., LL.B.

\* Indicates award to be reported in full or in part in *Labour Arbitration Cases*.

† Indicates award issued under section 37a of *The Labour Relations Act*.

**Bargaining Unit**

Full-time academic appointments—limited term appointments with one half or less academic responsibilities not within unit; appointments of less than one year with full academic responsibility within unit. *Re Carleton University and Carleton University Staff Association; union grievance*, May 30, 1980. Carter—11 pages. (1)

**Board of Arbitration**

Enforcement of prior award—no jurisdiction to enforce compliance; grievance not arbitrable. *Re Herb Fraser and Associates Ltd. and United Steelworkers of America, Local 7022; union grievance*, June 6, 1980. McLaren, Werner, Urbanovics—5 pages. (2)

Implementation of award causing problems—board unable to take further steps. *Re Consolidated Building Maintenance Services Ltd. and Canadian Union of Operating Engineers and General Workers, Local 101; company grievance*, May 9, 1980. McCulloch, Harrison, Creighton—4 pages; enclosures—9 pages. (3)

**Call-in Pay**

Entitlement—workers not entitled to call-in pay for scheduled overtime; grievance dismissed. *Re Canadian Johns Manville Company Ltd. and Canadian Chemical Workers Union, Local 26; policy grievance*, June 12, 1980. Majority: Brunner, Wakely—5 pages; dissent: McIlwain. (4)

**Classification**

Dual rates paid—proper if different work performed; grievance dismissed. *Re Lennox Industries (Canada) Ltd. and United Steelworkers of America, Local 7235; Melis grievance*, June 24, 1980. Majority: O'Shea, O'Byrne—18 pages; dissent: Mills. (5)

Grievors temporarily doing same work as employees in another department in Job 14 classification but paid at their regular Job 12 rate—work performed fell within Job 12 description; grievances dismissed. *Re Steel Company of Canada, Hilton Works, and United Steelworkers of America, Local 1005; Laderoute, Silverstri grievances*, March 24, 1980. Majority: Ellis, Murray—4 pages; did not concur: Davis. (6)

Improper classification alleged—grievor not placed within classification structure prior to new collective agreement; grievance dismissed. *Re Beechgrove Regional Children's Centre and Ontario Public Service Employees' Union, Local 444; Sly grievance*, June 18, 1980. Majority: Carter, Billings—9 pages; dissent: Switzman. (7)

Job evaluation not included within term "classification"—Board precluded by agreement from hearing grievance. *Re H.J. Heinz Company of Canada Ltd. and Amalgamated Meat Cutters and Butcher Workmen of North America; Hutchison grievance*, June 14, 1980. Majority: R.J. Roberts, Dinsdale—8 pages; dissent: Walsh. (8)

Rate of higher classification claimed based on similar job duties—similarity not made out; grievance denied. *Re Chedoke Hospitals, Hamilton, and Ontario Public Service Employees' Union; policy grievance*, November 27, 1979. Presgrave—7 pages. (9)

Upgrading of technologists' level at issue—current classification correct; grievance dismissed. *Re Peterborough Civic Hospital and Ontario Public Service Employees' Union; union grievance*, February 15, 1980. Presgrave—8 pages. (10)

Work of higher classification not performed—grievance dismissed. *Re Irvin Industries Canada Ltd. and International Association of Machinists and Aerospace Workers; Weisenburg grievance*, June 4, 1980. Samuels—3 pages. (11)

Work performed not dispositive—primary responsibility residing in other employee; grievance dismissed. *Re Dominion Stores Ltd. and Retail, Wholesale and Department Store Union, Local 579; McColeman grievance*, May 29, 1980. Majority: O'Shea, White—12 pages; dissent: Prudhomme. (12)

**Clothing**

Issue of shorts in summer—no limitations on issue; grievance allowed. *Re Borough of Scarborough, Corporation of, and Scarborough Civic Employees' Union, Local 368, Canadian Union of Public Employees; policy grievance*, May 27, 1980. Fraser—9 pages. (13)

**Collective Agreement**

Retroactivity—all employees entitled to retroactive holiday pay; grievance allowed. *Re Salvation Army Grace General Hospital, Ottawa, and Ontario Nurses' Association; policy grievance*, May 29, 1980. Carter—10 pages. (14)†\*

**Damages**

Mitigation of damages—overtime pay from substitute employer must be deducted from lost wages; supplementary award granted. *Re Dover Corporation (Canada) Limited, Turnbull Elevator Division, and International Association of Machinists and Aerospace Workers, Elevator Lodge 1257; Foster grievance*, June 12, 1980. Brunner, Cook, Wren—7 pages. (15)\*

**Demotion**

Reclassification upon interdepartmental transfer—grievor not given notice; grievance allowed in part. *Re Fleet Industries and Frontier Lodge No. 171, International Association of Machinists and Aerospace Workers; Allender grievance*, June 2, 1980. Arthurs—10 pages. (16)

**Discharge**

Absence due to compensable accident—failure to show grievor could not recover sufficiently to give proper attendance in future; grievance allowed. *Re Canada Metal Company Limited and Canadian Chemical Workers Union, Local 2, Marsden grievance*, June 16, 1980. Majority: H.D. Brown, McIlwain—13 pages; dissent: Metras. (17)

Absence without leave—constituting voluntary quit under collective agreement; grievance dismissed. *Re Prestolite Company and Eltra Unit of Local 252, United Automobile Workers; Reece grievance*, June 27, 1980. H.D. Brown—8 pages. (18)

Absence without notice—penalty too severe due to lax conditions for reporting illness and some effort to report by grievor; reinstatement without compensation. *Re Denison Mines Ltd. and United Steelworkers of America; Caissy grievance*, June 4, 1980. Palmer—12 pages. (19)

Absence without notice—seven days meaning clear working days; grievance allowed. *Re Firestone Canada Inc. and United Rubber, Cork, Linoleum and Plastic Workers of America, Local 113; Martin grievance*, June 20, 1980. Majority: Weatherill, Switzman—10 pages; addendum: Switzman—2 pages; dissent: Filion—2 pages. (20)

Absenteeism—culminating incident; disciplinary record relevant for purposes of determining appropriateness of penalty; grievance dismissed. *Re Purity Packaging Ltd. and Canadian Paperworkers Union, Local 685; Twomey grievance*, June 24, 1980. P.M. Draper—21 pages. (21)

Absenteeism—lack of medical evidence to justify discharge; conditional reinstatement without compensation. *Re Canadian International Paper Company, Container Division, and Canadian Paperworkers Union, Local 949; Shea grievance*, May 30, 1980. Palmer—12 pages. (22)

Absenteeism: grievor was absent from work without making reasonable effort to notify company—culminating incident established; past history of absenteeism and lateness; grievance dismissed. *Re Steel Company of Canada, Hilton Works, and United Steelworkers of America, Local 1005; Taylor grievance*, May 29, 1980. Rayner, MacPherson, Storie—8 pages. (23)

Breach of trust—specific clause in collective agreement leaving no discretion to mitigate penalty; grievance dismissed. *Re General Bakeries Ltd. and Milk and Bread Drivers, Dairy Employees, Caterers and Allied Employees, Local Union 647; Lywood grievance*, June 3, 1980. Majority: Rayner, McGowan—9 pages; dissent: Miller. (24)

Consumption of alcohol on company premises—supervisors failing to make adequate investigation to identify other participants; suspension substituted for discharge. *Re Quaker Oats Company of Canada Limited and United Food and Commercial Workers, Local 293-1; Lain, Horton, Conlin grievances*, June 16, 1980. Majority: Hinnegan, Leahy—11 pages; dissent: Storie—6 pages. (25)

Consumption of alcohol on company premises during working hours—prior record considered; grievance dismissed. *Re Butler Metal Products Company Ltd. and United Automobile Workers, Local 1780; Koehler grievance*, June 16, 1980. H.D. Brown—15 pages. (26)

Consumption of alcohol on employer's premises—discharge lessened to reinstatement without compensation. *Re Riverside Yarns Ltd. and Amalgamated Clothing and Textile Workers Union, Local 2281; Gaucher grievance*, June 23, 1980. Adams, Binning, Hainsworth—7 pages. (27)

Consumption of alcohol on job and threatening a supervisor—discharge too severe; grievance allowed on condition that grievor continue his treatment and not revert to use of alcohol. *Re North York, Corporation of City of, and North York Civic Employees Union, Local 94, Canadian Union of Public Employees; Kinsella grievance*, May 20, 1980. McLaren—18 pages. (28)

Culminating incident—progressive discipline followed; grievance dismissed. *Re Firestone Steel Products and United Automobile Workers, Local 27; Barrette grievance*, May 26, 1980. Teplitsky—5 pages. (29)

Culminating incident—just cause for discharge in culminating incident and past record; grievance dismissed. *Re Federal Pioneer Limited and United Electrical, Radio and Machine Workers of America, Local 512; Barron grievance*, June 5, 1980. Saltman—13 pages. (30)

Culminating incident—prior record justifying discharge; grievance dismissed. *Re Lake Ontario Steel Co. Ltd. and United Steelworkers of America, Local 6571; Finley grievance*, May 23, 1980. Weatherill—6 pages. (31)

Culminating incident—work performance complaints not part of grievor's record and thus not considered; suspension substituted. *Re CKLW Radio Broadcasting Limited and American Federation of Television and Radio Artists; Melborn grievance*, June 4, 1980. Brandt—22 pages. (32)

Defamation alleged in union newsletter—no malice found; grievance allowed. *Re Burns Meats Ltd. and Canadian Food and Allied Workers, Local P139; Streit grievance*, June 25, 1980. Majority: M. Picher, Walsh—38 pages; dissent: Dinsdale. (33)\*

Dereliction of professional duties—failing to discharge responsibility after making serious medical error; grievance dismissed. *Re Durham Regional Board of Health and Ontario Nurses' Association, Local 57; Matheson grievance*, March 31, 1980. Majority: Willes, von Veh—21 pages; dissent: Walsh—5 pages. (34)

Failure to submit to medical examination by company doctor—collective agreement providing specific penalty for this infraction; Board has no power to substitute lesser penalty; grievance dismissed. *Re Welland Forge Limited and United Electrical, Radio and Machine Workers of America, Local 523; Dignard grievance*, May 29, 1980. O'Connor—14 pages; partial dissent: McKillop—1 page; dissent: Russell—2 pages. (35)

Falsification of application—concealed health conditions; grievance dismissed. *Re Goodyear Canada Inc. and United Rubber, Cork, Linoleum and Plastic Workers of America, Local 232; Wawrew grievance*, June 14, 1980. Ellis—6 pages. (36)

Fighting—penalty appropriate; grievance dismissed. *Re Lever Detergents Ltd. and Teamsters—Chemical, Energy and Allied Workers, Local 132; Smith grievance*, June 26, 1980. Majority: H.D. Brown, Clawson—15 pages; dissent: Phillips. (37)

Insubordination—refusal to accept standby duty constituting a strike; grievances dismissed. *Re Glengarry Memorial Hospital and Canadian Union of Public Employees, Local 2027; Bedard, Picard and Contant grievances*, May 29, 1980. Majority: O'Shea, Harnden—18 pages; dissent: Drouin. (38)

Quit alleged—statements of intent to quit and further act of drafting written resignation establishing clear intent to quit; grievance dismissed. *Re Board of Education for the Borough of North York and Canadian Union of Public Employees, Local 922; Barker grievance*, June 24, 1980. Majority: Hinnegan, Brady—11 pages; dissent: Millage—2 pages. (39)\*

Misuse of airline pass privileges—grievor's testimony found not credible; previous discipline considered; grievance dismissed. *Re Air Canada and Canadian Air Line Flight Attendants Association; Herd grievance*, June 12, 1980. Kennedy—21 pages. (40)

Participation in illegal strikes—evidence not showing grievor to be one of first participants; grievance allowed. *Re Firestone Steel Products of Canada and United Automobile Workers, Local 27 Unit 17; Camenzuli grievance*, June 20, 1980. Brent—14 pages. (41)

Possession of marijuana at work contrary to plant rules; company entitled to protect its public image, but grievor's conviction caused no particular notoriety; grievance allowed; reinstatement without compensation. *Re McDonnell Douglas Canada Ltd. and United Automobile Workers, Local 1967; Morris grievance*, June 2, 1980. O'Shea—13 pages. (42)

Theft—presumption that discharge is appropriate remedy not rebutted; grievance dismissed. *Re General Bakeries Ltd. and Teamsters Union, Local 141; Adams grievance*, May 28, 1980. Majority: Rayner, McGowan—10 pages; dissent: McRae. (43)

Theft alleged—burden of proof not met; grievance allowed. *Re William Neilson Limited and United Food and Commercial Workers International Union, Local P529A; Fortunas grievance*, May 30, 1980. Majority: Weatherill, Hand—9 pages; dissent: Healy—2 pages. (44)

Theft and falsification of company records; no grounds for modification of penalty; grievance dismissed. *Re Steel Company of Canada Limited, Hilton Works, and United Steelworkers of America, Local 1005; Vanderburg grievance*, June 5, 1980. Majority: McLaren, Drmaj—17 pages; did not concur: Marshall. (45)

Theft from employer—practical joke intended; discharge reduced to suspension without compensation. *Re Labatt's Ontario Breweries and National Brewery Workers' Union; Oliver grievance*, June 18, 1980. O'Connor—8 pages; (46)

#### Discipline

Absence because of court appearance—instructions as to leave to attend unclear; onus on employer not satisfied; grievance allowed. *Re City of Toronto, Corporation of, and Metropolitan Toronto Civic Employees Union, Local 43; Jones grievance*, May 7, 1980. Scott, Tate, Dinsdale—6 pages. (47)

Absence from work station without permission—not established; grievance allowed. *Re Union Carbide Canada Limited, Metals and Carbon Division, and United Electrical, Radio and Machine Workers of America, Local 523; Maddalena grievance*, June 16, 1980. Majority: H.D. Brown, Bosnich—10 pages; dissent: Orsini—1 page. (48)

Absence without leave—failure to return from lunch break; previous disciplinary records considered; grievances dismissed. *Re Canadian Ohio Brass Co. Ltd. and Teamsters—Chemical Energy and Allied Workers, Local 1345; Kitney and Benvenuti grievances*, May 30, 1980. H.D. Brown—10 pages. (49)

Absence without permission—past practice altered without sufficient notice; lesser penalty substituted. *Re Hickeson-Langs Supply Company Ltd. and Teamsters Union, Local 419; union grievance*, June 17, 1980. Majority: Weatherill, White—10 pages; dissent: Houck—2 pages. (50)

Adverse evaluation—comments not discipline; grievance not arbitrable. *Re Seneca College and Ontario Public Service Employees Union; Barrett grievance*, June 27, 1980. Majority: H.D. Brown, Correll—12 pages; dissent: Beaulieu—1 page. (51)

Expansion of grounds at hearing—employer cannot extend grounds for discipline at hearing; cause for discipline not proven; grievance allowed. *Re Steel Company of Canada Limited, Hilton Works, and United Steelworkers of America, Local 1005; Dickens grievance*, June 27, 1980. Majority: Burkett, Bard—9 pages; partial dissent: Baker—2 pages. (52)

Extended coffee breaks—substitution of lesser suspension. *Re Kanata, Corporation of the City of, and Canadian Union of Public Employees, Local 1670; Beach grievance*, May 6, 1980. Majority: Scott, Kearney—10 pages; dissent: McDougall—1 page. (53)

Fighting on the job: grievor was involved in brief altercation with another employee—grievance dismissed. *Re Johnson Matthey Limited and Precious Metal Workers Union, Federal Local 24739; Chhabra grievance*, May 12, 1980. Majority: Curtis, Murray—5 pages; dissent: Weisbach—2 pages. (54)

Insubordination and failure to follow proper work procedure—grievance allowed in part; two-day suspension unaltered but record of violation of procedure to be deleted from grievor's file. *Re Spruce Falls Power and Paper Company Limited and Lumber and Sawmill Workers' Union, Local 2995; Peterson grievance*, May 22, 1980. Teplitsky, Wren, Ronson—5 pages. (55)

Misuse of airline pass privileges alleged—onus not met; reinstatement with compensation. *Re Air Canada and Canadian Air Line Employees Association; Dzogan grievance*, June 2, 1980. H.D. Brown—22 pages. (56)

Mitigation of penalty—progression from warning letter to six-month suspension too severe; suspension reduced. *Re Hydro Electric Commission of Kitchener-Wilmot and International Brotherhood of Electrical Workers, Local 636; Moser grievance*, May 28, 1980. Majority: Rayner, Wacheski—13 pages; dissent: Carrier—5 pages. (57)

Parking regulations violated—revocation of parking permit reasonable; suspension of grievor reduced to one day. *Re Ontario Hydro and Canadian Union of Public Employees, Ontario Hydro Employees Union, Local 1000; Underwood grievance*, June 23, 1980. Brunner, Murray, McCullough—8 pages. (58)

Progressive discipline—effect of lapse of time; grievance dismissed. *Re Steel Company of Canada, Hilton Works, and United Steelworkers of America, Local 1005; Patrick grievance*, June 10, 1980. Majority: Ellis, Storie—5 pages; dissent: Elder—1 page. (59)\*

Reporting for work under the influence of alcohol—grievance upheld. *Re Canadian Transit Company and Teamsters Union, Local 880; Danelon grievance*, May 30, 1980. Majority: O'Connor, Kobryn—9 pages; dissent: Bartlet—7 pages. (60)

Unauthorized absence from work area—plant rule not clearly and unambiguously communicated to grievor; grievance allowed. *Re Steel Company of Canada Limited, Hilton Works, and United Steelworkers of America, Local 1005; McConnachie grievance*, May 30, 1980. Majority: Brent, Bard—8 pages; dissent: Baker—3 pages. (61)

Work performance—grievor attempting to act reasonably in bad situation; grievance allowed. *Re City of Toronto, Corporation of, and Canadian Union of Public Employees, Local 79; Wrigley grievance*, June 17, 1980. Majority: Samuels, Tate—9 pages; dissent: Dinsdale—1 page; enclosure—3 pages. (62)

Unsatisfactory work performance alleged—company procedures on testing not laid down with sufficient particularity; substitution of lesser suspension. *Re Reynolds Aluminum Company of Canada Ltd. and International Molders and Allied Workers Union, Local 28; Mangat grievance*, June 23, 1980. Kennedy—10 pages. (63)

### Evidence

Hearsay—Ministry of Transport report and report prepared by company not admissible as proof of their contents. *Re Air Canada and Canadian Air Line Pilots Association; Stewart grievance*, May 9, 1980. Majority: Weatherill, von Veh—5 pages; dissent: O'Reilly—6 pages. (64)

### Grievance Procedure

Timeliness—compliance with time limits not mandatory; grievance arbitrable. *Re Jones Transport Company Ltd. and Teamsters Local Union 879; union grievance*, June 9, 1980. Majority: H.D. Brown, Hurd—16 pages; dissent: Churchmuck—3 pages. (65)

### Holidays

Designation of floating holiday—employer conferring with union in good faith as required in collective agreement; grievance dismissed. *Re Borough of Scarborough, Corporation of, and Scarborough Civic Employees' Union, Local 368, Canadian Union of Public Employees; policy grievance*, June 16, 1980. Fraser—8 pages. (66)

Entitlement—right to holidays in agreement not coextensive with calendar year but running with time span of the agreement; grievance dismissed. *Re Eastern Steelcasting and United Steelworkers of America, Local 8794; union grievance*, May 29, 1980. Shime—6 pages. (67)\*

### Holiday Pay

Qualifying days—suspended grievor found not to be "absent without leave" under collective agreement; grievance allowed. *Re Canadian Timken, Limited, and United Steelworkers of America; Harris grievance*, June 23, 1980. Weatherill—10 pages. (68)

Qualifying days; grievors called back from lay-off on the day after holiday—grievors failing to work qualifying day or be excused for absence in order to obtain holiday pay; grievance dismissed. *Re Caravelle Foods and Amalgamated Meat Cutters and Butcher Workmen of North America; group grievance*, June 19, 1980. Majority: O'Shea, Kitchen—13 pages; dissent: Hand. (69)\*

Refusal to work on holiday—no entitlement to holiday pay; grievances dismissed. *Re Canada Cement Lafarge Ltd. and United Cement, Lime and Gypsum Workers International Union; Darlison and Winlaw grievances*, June 4, 1980. Majority: H.D. Brown, Dinsdale—13 pages; dissent: Nokes. (70)\*

### Job Evaluation

Change of equipment—increased noise level and requirement for increased concentration not substantiated; grievance dismissed with direction. *Re Borough of Scarborough, Corporation of, and Canadian Union of Public Employees, Local 545; union grievance*, June 13, 1980. Beatty, Lewis, Challis—8 pages. (71)\*

**Job Posting**

Age qualification for apprentice positions—age discrimination prohibited by collective agreement even if employer has problems training older employees; grievances allowed; remitted to employer to consider applicants without regard to age. *Re Decor Metal Products and United Automobile Workers, Local 1411; Ansley and Griffin grievances*, June 26, 1980. Brent—6 pages. (72)

Applicability of job posting procedures where training program—employer must test each employee completing program until qualified candidate found; grievance allowed. *Re Carling O'Keefe Breweries Limited and Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers, Local 325; policy grievance*, June 26, 1980. Egan—10 pages. (73)

Extent of requirement—posting applying to all classifications, even when employee would be moving into lower-rated job, unless agreement clearly provides otherwise; grievance allowed. *Re Steel Company of Canada, Limited, Hilton Works, and United Steelworkers of America, Local 1005; policy grievance*, May 7, 1980. Beck—10 pages; dissent: Storie—5 pages; partial dissent: Hynd—2 pages. (74)

Qualifications—grievor not qualified to perform posted job without training; grievance dismissed. *Re DeLaval Company Limited and International Association of Machinists and Aerospace Workers, Kawartha Lodge 872; Crough grievance*, May 9, 1980. Weatherill—8 pages. (75)

**Job Vacancy**

Existence of vacancy—job not appearing as separate classification in collective agreement; past practice argued; grievance dismissed. *Re Plasticap Limited and Premier Plastics Limited and United Electrical, Radio and Machine Workers of America, Local 544; union grievance*, May 7, 1980. Beck, Bezo, Drmaj—5 pages. (76)

**Lay-Off**

Bumping rights—no right to bump employee on paid education leave; grievance dismissed. *Re Diamond National of Canada Limited and International Woodworkers of America; group grievance*, June 3, 1980. Majority: Burkett, Wakely—9 pages; dissent: Marcantonio. (77)

Bumping-up—collective agreement's clear wording given effect; grievances allowed. *Re Pioneer Chain Saw Corporation Inc. and United Steelworkers of America, Local 8753; Watson, Dumoulin grievances*, June 16, 1980. Hinnegan—11 pages. (78)\*

Bumping rights—only downward bumping contemplated by collective agreement; grievance dismissed. *Re Anson General Hospital and Office and Professional Employees International Union, Local 151; Ellis grievance*, June 19, 1980. Majority: O'Shea, Hassell—21 pages; dissent: Farrell. (79)

Bumping rights exercised by grievor—subsequent illness entitled grievor to leave of absence, not lay-off; grievance allowed. *Re Lear Siegler Industries and United Automobile Workers, Local 1524; Svazic grievance*, June 11, 1980. Weatherill—8 pages. (80)

Extent of bumping rights—lay-offs to be according to seniority within classification with full bumping rights. *Re Radio Shack Division Tandy Electronics Limited and United Steelworkers of America; group grievance*, June 12, 1980. Carter—17 pages. (81)†

Qualifications—lay-off different from promotion situation; grievor must have present ability; grievance dismissed. *Re Reynolds Aluminum Company of Canada Limited and International Molders and Allied Workers Union, Local 28; Cavalcante grievance*, May 21, 1980. Shime—8 pages. (82)\*

Transfer—employees in one classification may be transferred to perform work in another classification temporarily under agreement without lay-off provision applying; grievance dismissed. *Re Raybestos-Manhattan (Canada) Ltd. and United Steelworkers of America; Smith, Brooks grievance*, June 25, 1980. Weatherill—7 pages. (83)

Transfer to lower-rated job because of redundancy—not a lay-off; grievance dismissed. *Re St. Catharines, Corporation of City of, and Canadian Union of Public Employees, Local 157; Rymer grievance*, June 13, 1980. Majority: Beatty, Stewart—7 pages; dissent: Bosnich—2 pages. (84)

**Management Rights**

Extent of arbitral review—standard of management decision one of reasonableness and fairness; grievance dismissed. *Re Milton District Hospital and Ontario Nurses' Association; Eige grievance*, June 19, 1980. Majority: Brandt, Dixon—38 pages; dissent: Richards—11 pages. (85)\*

**Probationary Employee**

Discharge—evaluation and discharge failing to take grievor's area of specialization into account; just cause for discharge not shown; reinstatement as probationary employee with compensation. *Re Board of Education for the Borough of Scarborough and Ontario Secondary School Teachers' Federation, District 16; Wozniczko grievance*, June 25, 1980. Majority: M. Picher, Goudge—61 pages; dissent: Gordon—26 pages; addendum: Picher, Goudge—3 pages. (86)\*

**Promotion**

Eligibility of individual on lay-off—employer can consider individual though technically not an employee; grievance dismissed. *Re Falconbridge Nickel Mines Ltd. and United Steelworkers of America; DeCou grievance*, May 23, 1980. Weatherill—8 pages. (87)

Job at same classification level and same pay—job found to be a transfer for grievors; grievance dismissed. *Re Ascolelectric Limited and International Union of Electrical, Radio and Machine Workers, Local 553; group grievance*, June 24, 1980. Majority: Weatherill, Baldwin—8 pages; dissent: Knipfel—1 page. (88)\*

Qualifications—attendance relevant in assessing qualifications; grievance dismissed. *Re Northwestern General Hospital and Service Employees Union, Local 204; Blanchard grievance*, May 30, 1980. Majority: Kennedy, Singer—12 pages; dissent: Cooper—1 page. (89)

Qualifications—command of English required; supplementary grievance dismissed. *Re Certified Automotive Products Ltd. and United Steelworkers of America; Russo grievance*, May 30, 1980. Baum—6 pages. (90)

Qualifications—evidence of past practice enabling company to deny posted job to senior grievor on basis of its own requirements; grievance dismissed. *Re Port Weller Dry Docks and International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Local 680; Bryson grievance*, June 6, 1980. Majority: H.D. Brown, Brisbin—29 pages; dissent: Hayes. (91)

Qualifications—greater experience makes assumption of greater ability reasonable; grievance dismissed. *Re Falconbridge Nickel Mines Limited and Sudbury Mine, Mill and Smelter Workers, Local 598; Wohlfahrt grievance*, June 16, 1980. Majority: H.D. Brown, Valin—18 pages; dissent: Tester—1 page. (92)

Qualifications—physical limitations of grievor not such as to prevent him from carrying out duties; grievance allowed. *Re Hamilton Harbour Commissioners and Canadian Union of Public Employees, Local 958; Hadcock grievance*, May 26, 1980. Majority: Adams, Maguire—9 pages; dissent: Wace. (93)

Qualifications—successful candidate found to have substantially superior ability; grievance denied. *Re Dominion Stores Ltd. and Retail Clerks Union, Local 409; Moreau grievance*, May 26, 1980. Majority: McIver, Piercy—15 pages; dissent: Steneer—1 page. (94)

Qualifications: grievor required to have qualifications equal to those of successful applicant to be awarded job—grievor's ability to perform job found to be inferior; grievance dismissed. *Re Great Atlantic and Pacific Company of Canada Limited and Canadian Food and Allied Workers Local 175 and 633; Amalgamated Meat Cutters and Butcher Workmen of North America; Beaudoin grievance*, June 25, 1980. Majority: Brent, Baldwin—12 pages; dissent: Simon—1 page. (95)

#### Recall

Application of seniority—employees to be recalled to available work on basis of seniority; grievance dismissed. *Re Jones Transport Co. Ltd. and Teamsters Local Union 879; Aucain grievance*, June 19, 1980. M. Picher, Heather, Hurd—13 pages. (96)

Qualifications—grievor not having skill entitling him to recall; grievance dismissed. *Re John T. Hepburn Ltd. and United Steelworkers of America; Clarke grievance*, May 29, 1980. Shime, McGowan, Signoretti—4 pages. (97)

Qualifications—grievor not qualified to perform available work; grievance dismissed. *Re Irvin Industries Canada Ltd. and International Association of Machinists and Aerospace Workers; Hyde grievance*, June 9, 1980. Samuels—4 pages. (98)

#### Seniority

Bumping rights—attempts to exercise seniority over certain task pertaining to position already held by grievor not legitimate use of seniority; grievance dismissed. *Re Ontario Northland Railway and Railway Employees Department, Division No. 4; Bedard grievance*, May 23, 1980. Weatherill—8 pages. (99)

#### Sick Pay

Entitlement to benefits on paid holiday—grievance allowed in part. *Re American Can of Canada Limited and International Association of Machinists and Aerospace Workers, Local 1909; Kyriacou grievance*, June 19, 1980. Majority: M. Picher, Tate—9 pages; dissent: Agostinelli—3 pages. (100)\*

#### Travel Allowance

Payment of monthly vehicle allowance while on sick leave—allowance used for continued maintenance; grievance allowed. *Re Borough of North York, Corporation of, and Ontario Nurses' Association, Local 41; Hargrath grievance*, June 19, 1980. Majority: H.D. Brown, Herman—10 pages; dissent: McDermott—5 pages. (101)

#### Vacation

Calculation where maternity leave and sick leave taken—no reduction in vacation; grievances allowed. *Re La Residence St. Louis et Le Syndicat des Employes des Services Public d'Orleans; Dagenais, Aumont, Gagnon, Bussiere grievances*, May 20, 1980. Majority: Roach, Beaudry—11 pages; dissent: Rivest. (102)

#### Vacation Pay

Accrual of increased benefits—entitlement arising only after effective date of improvement; grievance dismissed. *Re Omstead Foods Limited and Teamsters, Chauffeurs, Warehousemen and Helpers, Local 880; union grievance*, June 3, 1980. Majority: Palmer, Bartlet—9 pages; dissent: Kobryn—3 pages. (103)

Calculation where lay-off—employment relationship continues during lay-off period and period to be included in calculation; grievance allowed. *Re Canteen of Canada and Retail, Wholesale and Department Store Union, Local 414; Sheppard grievance*, June 16, 1980. Majority: H.D. Brown, Spaxman—12 pages; dissent: Nielsen—2 pages. (104)

Eligibility—service as part-time employee counting; grievance allowed. *Re Royal Ottawa Hospital and Ontario Nurses' Association; Moore grievance*, June 23, 1980. Roach—8 pages. (105)t

**Wages**

Incentive pay—payment for breaks; grievance allowed. *Re Kelsey Hayes Canada Ltd., Conroy Division, and United Automobile Workers, Local 199; union grievance*, May 20, 1980. Weatherill—6 pages. (106)

Temporary assignment—grievor not responsible for drop in productivity; grievance allowed. *Re Goodyear Canada Inc., New Toronto Factory and Central Distributing Warehouse, and United Rubber, Cork, Linoleum and Plastic Workers of America, Local 232; Passmore grievance*, June 3, 1980.

Majority: Brunner, Tate—8 pages; dissent: Filion—3 pages. (107)

Work guarantee—agreement not guaranteeing five full shifts per week; grievances dismissed. *Re Mutual Press Limited and Ottawa Typographical Union, Local 102; Kerr, Carson, Jameson, Hodges grievances*, May 20, 1980. Weatherill—9 pages. (108)

**Welfare Plans**

Payment of OHIP premiums—grievance allowed in part; grievor entitled to payment of premiums for herself, but not family. *Re Seminole Management and Engineering Company and Christian Labour Association of Canada; Suzor grievance*, June 18, 1980. Brent—8 pages. (109)

**Work Assignment**

Bargaining unit work assigned to non-bargaining unit employee—appropriate remedy considered. *Re Hawker Siddeley Canada Ltd., Orenda Division, Data Processing and Graphics Division, and Technical Associates Lodge 1922 International Association of Machinists; Perris grievance*, June 9, 1980. Adams—7 pages. (110)

Bargaining unit work temporarily done by non-bargaining unit personnel—difficulties on the job had arisen which justified the use of supervisors under the collective agreement; grievance dismissed. *Re Spar Aerospace Products Limited and United Automobile Workers, Local 673; policy grievance*, June 9, 1980. Rayner—7 pages. (111)

The following awards in interest arbitrations under *The Hospital Labour Disputes Arbitration Act* were also filed with the Office of Arbitration during the month of June, 1980.

*Belvedere Heights Home for the Aged and Ontario Nurses' Association*, H.D. Brown, Mayne—27 pages; supplement: Mayne—4 pages; partial dissent: O'Byrne.

*Eastholme, Home for the Aged, Powassan, and Canadian Union of Public Employees, Local 1339*, H.D. Brown, Kuyek—10 pages; dissent in part: Buckland—2 pages.

*Little's Nursing Home (Tecumseh) Limited and Ontario Nurses' Association*, Rubenstein—23 pages; dissent in part: Docherty; dissent in part: Walsh.

*Mount Sinai Hospital and Ontario Nurses' Association*, Baum, Belford—18 pages; partial dissent: Goudge—2 pages.

*Ottawa General Hospital and Ontario Nurses' Association*, Simmons, Belford—23 pages; partial dissent: Goudge—1 page.

*Stratford General Hospital and Ontario Nurses' Association*, Samuels, Belford—86 pages; partial dissent: Goudge—3 pages.

*Tri-Town Nursing Home Limited (Haileybury), Tri-Town Nursing Home Limited (Kapuskasing), Sudbury Nursing Homes Limited (Sudbury), Cochrane Nursing Home Limited (Hearst), Timmins Nursing Home Limited (Timmins) and Canadian Union of Public Employees Locals 904, 1771 and 1182*, Davidson, Brisbin—21 pages; dissent: Walsh—8 pages.

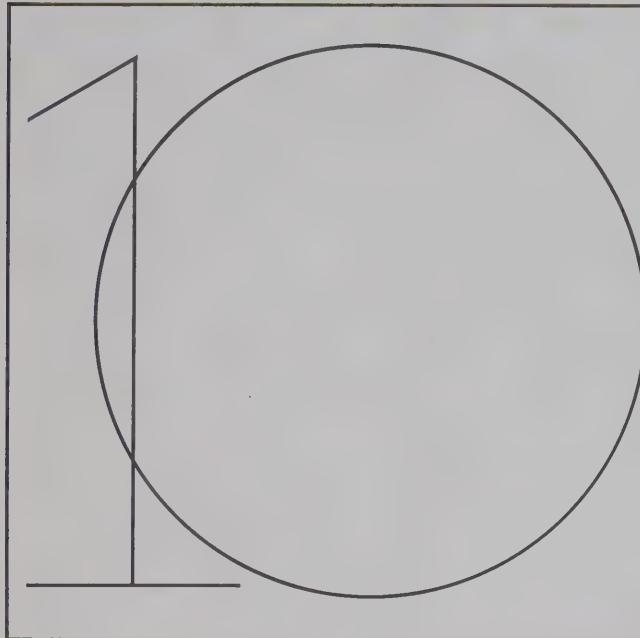
The awards may be seen at the Office of Arbitration, 400 University Avenue, 6th Floor, Toronto. Copies of awards may be obtained for a fee of 50 cents per page. Orders will be filled on receipt of an application and a cheque or money order payable to the Treasurer of Ontario for the applicable amount, which should be forwarded to: Cashier's Office, Ministry of Labour, 400 University Avenue, Toronto, Ontario, M7A 1T7.

**Filing Awards**

The attention of chairmen of boards of arbitration and sole arbitrators is drawn to the regulations under *The Labour Relations Act* which require every arbitrator to file a copy of his award with the Office of Arbitration within ten days of issuing such award.

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# Monthly Bulletin



Office of Arbitration

Miss Jean M. Read, Director.



Ontario

Ontario Ministry of Labour  
400 University Avenue, 6th Floor  
Toronto, Ontario  
M7A 1T7  
Tel. (416) 965-5669

Hon. Robert Elgie, M.D., Minister  
T.E. Armstrong, QC, Deputy Minister

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Office of Arbitration as a service to  
persons involved in labour-management  
arbitrations.

#### Appointment of Arbitrators

Forms for requests for appointment of arbitrator under Section 37a of *The Labour Relations Act* are available on request, from the Office of Arbitration.

#### Arbitrators

The following person is included on our list of fully approved arbitrators:

Mr. Rory F. Egan, 318 Lenel Court, Mississauga, Ontario, L5A 1R9; telephone (416) 279-4940.

#### Awards

The following awards were filed with the Office of Arbitration during the month of July, 1980.

The summary was prepared at the Faculty of Law, Queen's University, under the supervision of C.G. Simmons, B.A., B.C.L., LL.M., D.D. Carter, B.A., B.C.L., LL.B., and K.P. Swan, P.Eng., LL.B.

\* Indicates award to be reported in full or in part in *Labour Arbitration Cases*.

† Indicates award issued under section 37a of *The Labour Relations Act*.

#### Arbitrability

Probationary employee denied access to grievance procedure under collective agreement—s. 37 of *Labour Relations Act* overriding; grievance arbitrable. *Re The Toronto Hydro-Electric System and Canadian Union of Public Employees, Local 1; Clements grievance*, August 20, 1979. Barton—12 pages. (1)\*

Section 37a—retroactive duration clause not making s. 37a inapplicable. *Re Noranda Metal Industries Ltd. and International Brotherhood of Electrical Workers, Local 2345; Tuck grievance*, July 11, 1980. Gorsky—8 pages. (2)\*†

Specific relief no longer sought—no value in determining issue; grievances dismissed. *Re Niagara South Board of Education and Ontario School Teachers' Federation, District 7; Jones, Morse, Wicks grievances*, July 16, 1980. Kennedy, Fisher, Dyson—11 pages. (3)\*

**Bargaining Unit**

Scope of unit—bargaining unit limited to mill operations; grievor fails to show violation of contracting out clause; grievance dismissed. *Re Boise Cascade Canada Ltd. Kenora Division and United Paperworkers Union, Kenora Local 1330; group grievance*, July 11, 1980. Lunney—12 pages. (4)

Security guard work—staff in question not performing function analogous to security guards; grievance dismissed. *Re Inco Metals Company and Canadian Guards Association; union grievance*, June 27, 1980. Majority: Rayner, Sanderson—10 pages; dissent: McVey. (5)

**Bereavement Leave**

Scope of benefit coverage—benefit not extending to paid leave to attend funeral of spouse's grandparent; previous similar payment in error and not binding on employers; grievance dismissed. *Re Blackstone Industrial Products Limited and United Automobile Workers, Local 1132; Porter grievance*, July 23, 1980. Weatherill—9 pages. (6)

**Classification**

Additional duties assigned—work found to be within scope of classification; grievance dismissed. *Re Brewers' Warehousing Company Limited and United Brewers' Warehousing Workers Provincial Board; union grievance*, July 21, 1980. Weatherill—10 pages. (7)

Certain functions of different classification performed—functions only an incidental part of grievor's job; fundamental nature of grievor's work not changed so as to justify a change of classification; grievance dismissed. *Re Silverwood Dairies, Division of Silverwood Industries Limited and Retail, Wholesale and Department Store Union, Local 440; Shannon grievance*, July 11, 1980. Weatherill, Wynter, Filion—9 pages. (8)

Establishment of new positions within classification—right of employer to establish new positions limited by collective agreement; grievance allowed. *Re Canadian National Telecommunications and Canadian Telecommunications Division of Canadian Brotherhood of Railway Transport and General Workers; policy grievance*, July 24, 1980. Majority: M.G. Picher, Walsh—16 pages; dissent: Dinsdale—4 pages. (9)

Higher classification claimed—grievor found to be performing duties of a higher classification; grievance allowed with compensation. *Re Fleet Industries and Frontier Lodge 171, International Association of Machinists and Aerospace Workers; Laurin grievance*, July 22, 1980. Majority: Brent, Carter—8 pages; dissent: Marchand—3 pages. (10)

Higher classification claimed—work performed which is outside of job description minor; grievance dismissed. *Re TIW Industries Limited, Steel Platework Division and United Steelworkers of America, Local 2820; Hylton grievance*, July 15, 1980. Saltman, Penny, McGowan—5 pages. (11)

Higher classification work performed—compensation for such work ordered so long as grievor continues to do so. *Re Regional Municipality of Niagara and Canadian Union of Public Employees, Local 1287; Stefanich grievance*, June 3, 1980. Teplitsky, Bown, Monkman—8 pages. (12)

Overlap of job functions—employer not assigning work of one job classification to another classification; grievance dismissed. *Re O & K Orenstein and Koppel Canada Ltd., and International Association of Machinists and Aerospace Workers, Local 1740; Sololowski grievance*, June 23, 1980. Majority: Teplitsky, McKillop—6 pages; dissent: Carter. (13)

Reclassification—procedures for review of classification; approval of department head not necessary according to collective agreement; grievance upheld. *Re Carleton University and Carleton University Support Staff Association; Smith grievance*, June 10, 1980. Bernstein—13 pages. (14)

Reclassification of new job duties altered—introduction of lifting device resulting in reclassification from heavy to light assembly; grievance dismissed. *Re Air King Limited and International Association of Machinists and Aerospace Workers, Local 1817; Langdon grievance*, July 25, 1980. MacDowell, Griffiths, Wren—13 pages. (15)\*

Security duties performed—grievor found to perform substantially the same duties as a night watchman; grievance allowed. *Re Spruce Falls Power and Paper Company Limited and The Lumber and Sawmill Workers Union, Local 2995; Leonard grievance*, June 16, 1980. Majority: Brunner, Wren—6 pages; dissent: Filion—2 pages. (16)

Work not exclusively the function of one classification—grievance dismissed. *Re DeHavilland Aircraft of Canada Ltd. and United Automobile Workers of America; Wang grievance*, July 10, 1980. Gorsky—10 pages. (17)

**Collective Agreement**

Letter of intent—not part of collective agreement; grievance not arbitrable. *Re The York County Board of Education and Ontario Secondary School Teachers' Federation, District 11; union grievance*, June 30, 1980. Hinngan, N. MacL. Rogers, Felker—6 pages. (18)

**Contracting Out**

Contractor not employed by company; grievance dismissed. *Re Inco Metals Ltd. and United Steelworkers of America, Local 6500; Larocque and group grievance*, July 8, 1980. Majority: Simmons, Burkett—12 pages; dissent: Guillet—2 pages. (19)

**Damages**

Calculation where improper alteration of piece-rate wages—employees to be paid pre-alteration rates until employer changes them by using proper procedure set out in collective agreement, not retroactive payment of new rates once they are properly arrived at; grievance allowed. *Re Rockwell International of Canada Limited and International Molders' and Allied Workers' Union, Local 92; union grievance*, May 2, 1980. Teplitsky, Hardy, Byers—5 pages. (20)

Mitigation—grievor earning same amount as he would have earned had he not been discharged but had to work overtime to do so—grievor's overtime at new job should not be taken into account when assessing compensation. *Re The Sherway Inn and Hotel and Club Employees' Union, Local 299; Grougiannis grievance*, June 20, 1980. Majority: McCulloch, Tate—3 pages; did not concur: Frenkell. (21)

Mitigation—grievor's refusal to accept production work at lower pay from company was reasonable, but limiting himself to looking for work as a truck driver was unreasonable after a certain point in a lengthy period of unemployment; grievor's damages reduced. *Re The Transport Division of Corporate Foods Limited and Milk and Bread Drivers, Dairy Employees, Caterers and Allied Employees, Local 647; Yurkiw grievance*, July 14, 1980. Majority: Springate, Teichman—8 pages; dissent: Winkler. (22)

#### Demotion

Risk of injury—grievor susceptible to injury, company acting with caution; grievance dismissed. *Re Medi Park Lodges Inc. carrying on business as Crescent Park Lodge and Christian Labour Association of Canada; Montana grievance*, July 4, 1980. Majority: O'Shea, Cook—18 pages; minority: Grootenboer—6 pages. (23)

Work performance—proper corrective discipline pattern not used; grievance allowed. *Re John Deyell Company and Printing Specialties and Paper Products Union, Local 512; Walker grievance*, June 12, 1980. Majority: Ord, Nokes—9 pages; dissent: Reid—1 page. (24)

Work performances inadequate—action not disciplinary; grievance dismissed. *Re Field Aviation Company Ltd. and International Association of Machinists and Aerospace Workers, Local 2413; Cowl and Menzies grievance*, June 26, 1980. O'Connor—13 pages. (25)

#### Discharge

Absence from work station—lengthy suspension substituted for discharge. *Re Raybestos-Manhattan (Canada) Ltd. and United Steelworkers of America, Local 5141; Miles grievance*, July 17, 1980. McLaren—14 pages. (26)

Absence without leave—grievor contrived medical reasons to justify absence; grievance dismissed. *Re Canada Safeway Limited and Retail Clerks Union, Local 206; Newman grievance*, June 27, 1980. McLaren, Gilmore, Strickland—27 pages. (27)

Absence without legitimate reason—grievor in jail, company not obligated to grant leave of absence; grievance dismissed. *Re Charles Laue, Ltd. and United Automobile Workers, Local 195; Rochon grievance*, July 18, 1980. O'Shea—12 pages. (28)

Absence without notice alleged—notice sufficient; grievance allowed. *Re International Tools (1973) Ltd. and Windsor Mouldmakers Union, Local 1680 (C.L.C.); Kiss grievance*, July 23, 1980. Rubenstein—14 pages. (29)

Absenteeism—grievor unwilling to improve attendance; grievance dismissed. *Re George White and Sons Company Ltd. and International Association of Machinists and Aerospace Workers, Local 2029; Coutou grievance*, June 14, 1980. Majority: R.J. Roberts, Bertuzzi—13 pages; dissent: Wohl. (30)

Absenteeism—mitigating factors; reinstatement with no back pay. *Re Rio Algom Limited and United Steelworkers of America, Local 5417; Conley grievance*, July 2, 1980. Rayner—8 pages. (31)

Absenteeism—no reasonable prospect of being able to maintain regular attendance; grievance dismissed. *Re Tamco Limited and United Automobile Workers of America, Local 195; Pickersgill grievance*, July 17, 1980. Gorsky—8 pages. (32)

Absenteeism—trial period after final warning too short; grievance allowed in part. *Re Firestone Steel Products of Canada and United Automobile Workers of America, Local 27, Unit No. 17; Agar grievance*, June 30, 1980. Teplitsky—4 pages. (33)

Abuse of airline travel benefits involving transport of illicit drugs; grievance dismissed. *Re Air Canada and International Association of Machinists and Aerospace Workers; employee grievance*, July 10, 1980. H.D. Brown—13 pages. (34)

Abusive language directed at foreman—incident found to be a momentary flare-up; incident not found to be culminating incident; suspension substituted. *Re Fruehauf of Canada Inc. and United Automobile Workers of America; Parker grievance*, July 18, 1980. Brunner—8 pages. (35)

Assault alleged—company not sufficiently investigating the incident; several mitigating factors found; discharge is too severe; three week suspension substituted. *Re The Toronto Electric Commissioners and Canadian Union of Public Employees, Local 1; McDonald grievance*, July 4, 1980. Schiff—14 pages. (36)†

Conviction for fraud relating to activities falling outside the scope of his employment—mitigating circumstances; grievance allowed subject to conditions. *Re City of St. Catharines, Corporation of and St. Catharines Professional Fire Fighters' Association, Local 485 of International Association of Fire Fighters, Collins grievance*, July 17 1980. Brunner—22 pages. (37)

Culminating incident—discharge not reasonable disciplinary response for this incident; suspension substituted. *Re Benson and Hedges (Canada) Limited and Bakery, Confectionery and Tobacco Workers International Union, Local 325; Schinkel grievance*, June 19, 1980. Majority: Brunner, Tate—8 pages; dissent: Cook—2 pages. (38)

Culminating incident—evidence not supporting that grievor exposed himself to discipline; grievance allowed. *Re Denison Mines Ltd. and United Steelworkers of America; Hacala grievance*, June 25, 1980. Palmer—16 pages. (39)

Culminating incident—grievor's past disciplinary record cannot be taken into account because of collective agreement provision that past discipline will not be used as a basis for further discipline after one year has elapsed; one week suspension substituted for discharge. *Re Sheller-Globe of Canada Limited and United Automobile Workers of America, Local 1285; Reid grievance*, June 20, 1980. McLaren—11 pages. (40)

Culminating incident—incident not shown to warrant discipline; evidence of deliberateness of grievor's action hearsay; grievor reinstated. *Re Canadian Linen Supply Ontario Limited and London and District Service Workers' Union, Local 220; Corfield grievance*, July 7, 1980. R.J. Roberts, Crossman, Switzman—9 pages; addendum: Crossman—1 page. (41)

Dishonesty alleged—grievor borrowed company money, no intent to steal; suspension substituted. *Re Dominion Stores Ltd. and Retail, Wholesale and Department Store Union, Local 414; White grievance*, July 22, 1980. Majority: Kennedy, White—7 pages; dissent in part: Dahmer—1 page. (42)

Dishonesty alleged; negotiation of two pay cheques for same work period—no intent to defraud employer although grievor careless; reinstatement without compensation. *Re Kelsey-Hayes (Canada) Ltd. and United Automobile Workers; Lavin grievance*, June 3, 1980. Simmons—5 pages. (43)

Dishonesty—cheating incentive system alleged—intention to cheat not established; five day suspension substituted. *Re Certified Automotive Products Limited and United Steelworkers of America, Local 14831; Gallego grievance*, July 17, 1980. Baum—9 pages. (44)

Failure to work overtime assignment voluntarily undertaken—grievance dismissed. *Re Fruehauf Canada Inc. and United Automobile Workers of America; Smith grievance*, July 8, 1980. O'Shea—17 pages. (45)

Fighting—penalty lessened to reinstatement without compensation. *Re Otis Pant Company and Amalgamated Clothing and Textile Workers Union; Marques grievance*, July 10, 1980. Baum—11 pages. (46)

Insubordination: refusal to obey direct order—collective agreement providing for summary dismissal in such cases; grievance dismissed. *Re T.R.S. Food Service Limited and Retail, Wholesale, Dairy and General Workers Union, Local 440; Romano grievance*, July 16, 1980. H.D. Brown, Filion, Spaxman—11 pages. (47)

Intoxication and possession of alcohol on company premises—previous disciplinary record considered; grievance dismissed. *Re Canadian Oxygen Limited and United Steelworkers of America, Local 14231; Jarvis grievance*. June 27, 1980. Majority: Hinnegan, Purdy—5 pages; dissent: Penny—1 page. (48)

Loss of seniority because of absence without leave—reasons for absence not satisfactory; grievance denied. *Re Auberges Richelieu International Ltd. and Hotel, Restaurant Employees Union, Local 743; Avery grievance*, July 10, 1980. Majority: Hinnegan, Kavanaugh—11 pages; dissent: Sinkevitch. (49)

Picket-line conduct—conduct assessed in light of particularly bitter strike; discharge reduced to two week suspension. *Re Radio Shack Division, Tandy Electronics and United Steelworkers of America; Lloyd grievance*, June 23, 1980. Majority: Beck, Munro—11 pages; dissent: Noonan—3 pages. (50)

Picket-line conduct—existence of a strike, including finding that company had been bargaining in bad faith, considered as a mitigating factor; grievance allowed; one month suspension substituted. *Re Radio Shack Division, Tandy Electronics and United Steelworkers of America; Devoe grievance*, June 10, 1980. Majority: Beck, Munro—30 pages; dissent: Noonan—5 pages. (51)\*

Probationary employee—not precluded from grievance procedure; reinstatement ordered with compensation. *Re The Municipality of Metropolitan Toronto and Canadian Union of Public Employees, Local 43; Soldano grievance*, July 18, 1980. Majority: Simmons, Tate—13 pages; dissent: Baker—3 pages. (52)\*

Quit alleged—grievor's conduct indicates continuing subjective purpose of quitting; grievance dismissed. *Re Coca-Cola Limited and Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers; Leroux grievance*, July 10, 1980. Beck—19 pages. (53)\*

Work performance—employer failed to establish performance which would justify discharge; reinstatement with all benefits. *Re The Ontario College of Regents for Colleges of Applied Arts and Technology and Ontario Public Service Employees Union; Atkinson grievance*, June 10, 1980. Majority: Rayner, Cochrane—12 pages; dissent: McGivney. (54)

#### Discipline

Absence from work station without permission; discipline justified; grievances dismissed. *Re The Steel Company of Canada Limited, Hilton Works, and United Steelworkers of America, Local 1005; Disabatino, Cocoa and Sciarra grievances*, July 14, 1980. Majority: McLaren, Storie—9 pages; partial dissent: Bard—2 pages. (55)

Absence from work station without permission and insubordination—penalty not excessive; grievance dismissed. *Re The Steel Company of Canada Limited, Hilton Works, and United Steelworkers of America, Local 1005; Spencer grievance*, July 17, 1980. Majority: Beatty, Baker—10 pages; dissent: Marshall; addendum: Baker—1 page. (56)

Absence without notice—grievor not making reasonable efforts to notify company; lesser penalty substituted. *Re Dominion Textiles Inc., and United Textile Workers of America, Local 48; De Montigny grievance*, June 19, 1980. Majority: Abbott, Bosnich—12 pages; dissent: Mills—2 pages. (57)

Absence without notification or reasonable explanation—employer's account more consistent than grievor's; grievance dismissed. *Re Sklar Furniture Limited and Upholsterers' International Union of North America, Local 50; Ramadeen grievance*, July 16, 1980. Shime—17 pages. (58)

Absence without leave—repeated failures of grievor to contact employer considered apart from legitimacy of absences; grievance dismissed. *Re Cyanamid Canada Inc. and Canadian Chemical Workers Union, Local 21; Downey grievance*, July 11, 1980. Majority: Kennedy, Storie—12 pages; dissent: Pratt—3 pages. (59)

Abusive language—found not to be "shoptalk"; grievance dismissed. *Re Brock Containers and International Woodworkers of America, Local 2-83; anonymous grievance*, June 23, 1980. Majority: Shime, Sax—5 pages; dissent: Marcantonio. (60)

Assault upon supervisor—grievor provoked; suspension reduced with compensation. *Re Calvert of Canada Limited and United Automobile Workers of America, Local 2098; Marshall grievance*, July 4, 1980. Rayner—15 pages. (61)

Contact report—alleged failure to properly care for employer's equipment—no previous warning that practice unacceptable; grievance allowed. *Re The Municipality of Metropolitan Toronto and Metropolitan Civic Employees Union, Local 43; MacLellan grievance*, July 8, 1980. Majority: Saltman, Tate—11 pages; dissent: Baker—2 pages. (62)

Failure to meet production standards resulting in grievor being sent home—action by company not disciplinary; grievance dismissed. *Re Lamco Die Cast Company and United Steelworkers of America, Local 8097; Rush grievance*, July 18, 1980. Majority: McLaren, Yeo—9 pages; dissent: Wilton. (63)\*

Insubordination—grievor treating instruction as a joke; grievance dismissed. *Re De Havilland Aircraft of Canada Ltd. and United Automobile Workers, Local 112; Schoutens grievance*, June 23, 1980. Rayner—7 pages. (64)

Insubordination—refusal to complete work assignment; grievance dismissed. *Re Brewers' Warehousing Company Limited and United Brewers' Warehousing Workers Provincial Board; Rossi grievance*, July 9, 1980. Curtis—9 pages. (65)

Insubordination: refusal to obey order—assessment of credibility of grievor and supervisor; company established *prima facie* case which union failed to produce sufficient evidence to rebut; grievance dismissed. *Re The Steel Company of Canada Limited, Hilton Works and United Steelworkers of America, Local 1005; Bufalino grievance*, July 14, 1980. Majority: Brent, Murray—8 pages; did not concur: Marshall. (66)

Lock-out—employees late due to union meeting—company should have taken alternate disciplinary action; grievance allowed. *Re Outdoor Outfits Ltd. and United Garment Workers of America, Local 253; union grievance*, July 2, 1980. Majority: Punnett—4 pages; dissent in part: Ballantyne—3 pages; dissent: Diner. (67)

Threatening language—suspension reasonable; grievance dismissed. *Re Hespeler-St. Marys Wood Specialties Ltd. and International Woodworkers of America, Local 2-136; Springall grievance*, July 25, 1980. Brunner—8 pages. (68)

Unsafe work procedures—grievor's responsibility proven on a balance of probabilities; grievance dismissed. *Re The Steel Company of Canada, Limited, Hilton Works and United Steelworkers of America, Local 1005; Krikorian grievance*, June 23, 1980. Adams, Murray, Wilton—11 pages. (69)

Unwarranted examination of patient's personal effects and accosting of patient alleged—onus on employer not met; grievance allowed, suspension set aside. *Re Board of Management of Casselholm for the Aged for the District of Nipissing East and Canadian Union of Public Employees, Local 146; Poitras grievance*, May 26, 1980. Duchesneau-McLachlan, Belanger, Young—2 pages. (70)

Work performance—extenuating circumstances and poor management procedures mitigate; grievance allowed. *Re Indusmin Ltd. and Fuel, Bus, Limousine, Petroleum, Drivers and Allied Employees, Local 352; Bonneville grievance*, July 7, 1980. Majority: Kennedy, Gordon—11 pages; minority: Contardi—11 pages. (71)

### Estoppel

Representation during negotiations alleged—clear representation not established; grievance dismissed. *Re Sims Cabs Limited and International Teamsters Union, Local 91; group grievance*, July 7, 1980. Simmons, Robichard, Mills—8 pages. (72)

### Evidence

Production of documents—production of Job Evaluation Plan document would possibly jeopardize plan; production not ordered; company directed to provide Chairman with document for his information. *Re Atomic Energy of Canada Limited and Office and Professional Employees' International Union, Local 404; Lamont grievance*, July 9, 1980. Majority: Curtis, Healy—6 pages; dissent: Beaulieu—1 page. (73)

### Grievance Procedure

Waiver of time limits alleged—employer's conduct constituting waiver; grievance arbitrable. *Re Canadian Broadcasting Corporation and National Radio Producers Association; Byers grievance*, July 16, 1980. Shime—17 pages. (74)

### Holiday Pay

Part-time nurses denied holiday pay—collective agreement does not distinguish between part-time and full-time nurses in stipulating conditions for entitlement to holiday pay; grievances allowed. *Re Welland County General Hospital and Ontario Nurses' Association; Carpenter and Marchionda grievances*, June 10, 1980. Majority: Brunner, Beaulieu—9 pages; dissent: Dixon—2 pages. (75)

### Hours of Work

Staggered scheduling of lunch break—break not tied to particular period in collective agreement; grievance dismissed. *Re Duo-Matic Division of Duo-Matic/Olsen Inc. and United Steelworkers of America, Local 6325; group grievance*, July 24, 1980. H.D. Brown—8 pages. (76)

"Work day"—commencing at the actually scheduled commencement time; grievance allowed. *Re Noranda Metal Industries Ltd. and International Brotherhood of Electrical Workers, Local 2345; Tuck grievance*. See (2), *supra*. (77)\*†

### Job Evaluation

Disclosure—job evaluation manual incorporated by specific reference into agreement between parties—union must be appraised of manner of evaluation. *Re The City of Kingston, The Corporation of and Canadian Union of Public Employees, Local 141; union grievance*, July 4, 1980. Majority: O'Shea, Arsenault—23 pages; dissent: Abbott—3 pages. (78)

### Job Posting

Failure to post job outside bargaining unit even though no applications received from bargaining unit—no violation of collective agreement; no bad faith; grievance dismissed. *Re Regional Municipality of Waterloo and Canadian Union of Public Employees, Local 1883; policy grievance*, June 26, 1980. Majority: Rayner, White—4 pages; dissent: Maddison. (79)

Lateral transfer—past practice establishes lateral transfers not requiring posting; grievance dismissed. *Re The Four Seasons Hotels Ltd. (Inn on the Park) and Hotel and Club Employees' Union, Local 299; Abouelkheir grievance*, June 23, 1980. Majority: Teplitsky, Rogers—5 pages; dissent: Tate—2 pages. (80)

Lay-off—company required to post job vacancies per agreement; grievance allowed. *Re Multi-Fittings Ltd. and International Molders and Allied Workers Union, Local 49; Wickens grievance*, June 23, 1980. Shime—7 pages. (81)

Non-bargaining unit position not posted—assignment of managerial positions is an aspect of managerial rights; grievance not arbitrable. *Re Thunder Bay District Health Unit and Ontario Nurses' Association, Local 14; Baltzer grievance*, April 23, 1980. Majority: Duchesneau-McLachlan, Holt—8 pages; did not concur: Walsh. (82)

Selection of grievor subsequently revoked—once selection process has been completed, employer cannot change its mind; any deficiencies in selection process can only be remedied through the grievance procedure; grievance allowed; grievor awarded the job. *Re York University and York University Staff Association; Musikka grievance*, July 10, 1980. Brunner—20 pages. (83)\*†

#### **Job Vacancy**

Existence of vacancy—employer determined it no longer needed services in vacant position; grievor performing duties of vacant position not requested to do so by employer; grievance dismissed. *Re Beaver Wood Fibre Company Limited and United Paperworkers International Union; Moss grievance*, July 16, 1980. Majority: Rayner, McNeil—7 pages; dissent: Talarico—1 page. (84)

Existence of vacancy—not established on facts; grievance dismissed. *Re Duplate Canada Ltd. and United Automobile Workers, Local 222; policy grievance*, June 3, 1980. Simmons—7 pages. (85)

#### **Lay-Off**

Classification structure not provided in collective agreement—lay-off proper; grievance dismissed. *Re DuBois Chemicals of Canada Ltd. and Labourers' International Union of North America, Local 183; Smith grievance*, July 9, 1980. Majority: Carter, Grossman—10 pages; dissent: Hitchen. (86)

Qualifications—ability of grievor to perform job questionable without familiarization period; grievance dismissed. *Re Reynolds Aluminum Company of Canada Ltd. and International Molders and Allied Workers Union, Local 28; Gutierrez grievance*, June 24, 1980. Palmer—11 pages. (87)

Qualifications—grievor less qualified; grievance dismissed. *Re Kirkland Lake Board of Education and the Ontario Public School Men Teachers' Federation; Klockars grievance*, June 10, 1980. Majority: Duchesneau-McLachlan, Gordon—6 pages; dissent: Campbell—1 page. (88)

Temporary assignment of more junior employee to another job in department—no competition between two laid-off workers since junior employee was already employed in the department; grievance dismissed. *Re The Weatherhead Company of Canada Limited and International Association of Machinists and Aerospace Workers, Local 1804; Gahan grievance*, July 24, 1980. Majority: Hinnegan, Farrar—5 pages; did not concur: Carter. (89)

Transfer of work—not a lay-off under collective agreement; grievance dismissed. *Re Noranda Metal Industries Ltd. and International Brotherhood of Electrical Workers, Local 2345; Murphy grievance*, July 11, 1980. Gorsky—6 pages. (90)†

#### **Leave of Absence**

Late notice of refusal—no damage shown; grievance dismissed. *Re De Havilland Aircraft of Canada Ltd. and United Automobile Workers of America, Local 112; Gavira grievance*, June 23, 1980. Rayner—10 pages. (91)

#### **Management Rights**

Prohibition of union buttons—rule not clearly conveyed to employees; grievance allowed. *Re Hillcrest Hospital and Canadian Union of Public Employees, Local 2008; union grievance*, July 10, 1980. Majority: Brent, McGowan, Lewis—13 pages; addendum: Lewis—3 pages. (92)

#### **Overtime**

Right to be offered work—right existed only to employees on outgoing shift; grievance dismissed. *Re Dominion Textile Inc., and United Textile Workers of America, Local 468; DeMontigny grievance*, June 19, 1980. Abbott, Mills, Bosnich—7 pages; appendix: 1 page. (93)

#### **Premium Pay**

Night pay premium—not payable to night crew working during regular daylight shift; grievance dismissed. *Re Imperial Tobacco, Division of Imasco Ltd. and Bakery, Confectionery and Tobacco Workers International Union, Local 323; Montgomery, Elliott, Stettler, Brodeur grievance*, July 17, 1980. Majority: Beatty, Cook—7 pages; dissent: Gauvreau. (94)

#### **Procedure**

Preliminary objection alleged to be improper—not in violation of collective agreement; grievance dismissed. *Re Canadian Car Division Hawker Siddeley Canada Ltd. and Office and Professional Employees International Union, Local 81; policy grievance*, July 8, 1980. O'Shea—11 pages. (95)

#### **Promotion**

Additional qualifications required—grievor qualified for duties within classification; grievance allowed. *Re Inco Metals Company and United Steelworkers of America; Venedam grievance*, July 10, 1980. Majority: Weatherill, Carriere—6 pages; dissent: Sanderson. (96)

Letter of understanding not establishing qualifications—grievance dismissed. *Re Dominion Chain Company and International Association of Machinists and Aerospace Workers; Machinist Apprentice grievance*, June 26, 1980. Teplitsky, Beresford, Lewis—4 pages. (97)

Qualifications—Company's judgement exercised in "fair" manner; grievance dismissed. *Re Falconbridge Nickel Mines Ltd. and Sudbury Mine, Mill and Smelter Workers Union, Local 598; Wellings grievance*, July 25, 1980. Majority: Weatherill, Valin—6 pages; dissent: Tester. (98)

Qualifications—employer acting reasonably in selection even though grievor had greater seniority; grievance dismissed. *Re The Regional Municipality of Peel and International Brotherhood of Electrical Workers, Local 636; Millhouse grievance*, July 11, 1980. O'Shea, Schaefer, Houck—12 pages. (99)

Qualifications—grievor not relatively equal; grievance dismissed. *Re Northern Telecom Limited and United Automobile Workers, Local 1837; Larouche grievance*, June 3, 1980. Simmons—10 pages. (100)

Qualifications: assessment of relative qualifications of six grievors and the successful applicant; meaning of relatively equal qualifications discussed; grievance dismissed. *Re Toronto Star Newspapers Limited and Southern Ontario Newspaper Guild; group grievance*, July 4, 1980. Majority: Prichard, Middleton—27 pages; dissent: Tate—7 pages. (101)

Qualifications; employer relying on several minor incidents in grievor's past work record to come to conclusion that grievor did not have the necessary qualifications—these incidents were not substantiated at the hearing and had resulted in no discipline at the time they occurred; grievance allowed. *Re Scarborough General Hospital and Local 1487, Canadian Union of Public Employees; Keshwar grievance*, June 17, 1980. Brunner, Levis, Lewis—11 pages. (102)

#### Recall

Temporary vacancies—company not obligated to recall full-time staff; grievance dismissed. *Re Dominion Stores Limited and United Steelworkers of America, Local 14045; Mollard grievance*, July 18, 1980. Brent—12 pages. (103)

#### Reporting Pay

Reporting for disciplinary action—no evidence of grievor reporting-in for work; grievance dismissed. *Re Gates Rubber of Canada Limited and United Rubber, Cork, Linoleum and Plastic Workers of America, Local 733; union grievance*, July 17, 1980. Majority: R.J. Roberts, Gray—7 pages; dissent: Scime—3 pages. (104)

#### Sabbatical Leave

Proposed project inadequate—ruling made on content of proposal reasonable; grievance dismissed. *Re University of Windsor, Board of Governors of, and Faculty Association of University of Windsor; Gallant grievance*, July 25, 1980. Adell—23 pages. (105)

Salary entitlement—time worked as sub-professional librarian not applicable; grievance dismissed. *Re University of Windsor, Board of Governors of, and Faculty Association of University of Windsor; Gregor grievance*, July 25, 1980. Adell—8 pages. (106)

#### Scheduling of Work

Paid lunch break—employees found to be working *de facto* under a schedule which entitled them to paid lunch; grievance allowed in part. *Re Sangamo Company Limited and Toronto Lodge No. 1755 International Association of Machinists and Aerospace Workers; policy grievance*, July 7, 1980. Majority: O'Shea, Carter—14 pages; dissent: Whittaker—4 pages. (107)

Reduction of planning time—no evidence move ill-considered or time inadequate; grievance dismissed. *Re Halton Board of Education and Branch Affiliates of Federation of Women Teachers' Associations of Ontario and Ontario Public School Men Teachers' Federation—Halton Elementary Teachers' Association; policy grievance*, June 30, 1980. Majority: Hinnegan, MacDermid—10 pages; dissent: Felker. (108)

#### Seniority

Bumping rights—no right to displace another employee from a preferred job; grievance dismissed. *Re Canada Safeway Limited and Retail Clerks Union, Local 206; Thomlinson grievance*, July 10, 1980. Weatherill, Strickland, Sanderson—9 pages. (109)

Leave of absence—employee retains and accumulates seniority during leave; grievance allowed. *Re Donlands Dairy Company Limited and Teamsters Local Union 647; Sackfield grievance*, July 14, 1980. Majority: Rayner, Hurd—7 pages; dissent: Healy. (110)

Part-time employees—separate list not provided for in collective agreement; part-time employees to be included on seniority list for all employees; grievance allowed in part. *Re Abbott Laboratories Limited and Retail, Wholesale and Department Store Union, Local 440; union grievance*, July 22, 1980. Weatherill, Wynter, Whittaker—8 pages. (111)

Temporary employee—seniority rights acquired under collective agreement; grievance allowed. *Re Pioneer Chain Saw Corporation Inc. and United Steelworkers of America, Local 8753; Carr grievance*, July 7, 1980. Willes—6 pages. (112)

Termination of seniority—not affected by rehiring; grievance dismissed. *Re Domtar Inc., Domtar Construction Materials, and Teamsters Local Union 1216; McNamara grievance*, July 10, 1980. Majority: Brent, Byers—9 pages; dissent: Phillips. (113)

#### Sick Leave

Compulsory medical examination—company insisting on exam by its doctor before employees return to work unreasonable; grievance allowed. *Re Dare Foods (Candy Division) Limited and Bakery, Confectionery and Tobacco Workers International Union, Local 264; Young and Coulson grievance*, July 17, 1980. Majority: O'Shea, Chmielewski—18 pages; dissent: Grossman—2 pages. (114)

#### Temporary Employees

Acquisition of permanent status—not affected by discharge and rehiring; grievance allowed. *Re Domtar Inc. and Canadian Chemical Workers Union, Local 37; Palmer et al grievance*, July 4, 1980. Majority: Hinnegan, Rogers—9 pages; minority: Byers—2 pages. (115)

**Transfer**

Reduced work load causing transfer—reasonable business response; grievance dismissed. *Re Standard Tube Canada Limited and United Automobile Workers, Local 636; Packer grievance*, July 24, 1980. H.D. Brown—11 pages. (116)

Re-transfer back into department—seniority rights applicable; grievance allowed with compensation. *Re Inco Metals Company and United Steelworkers of America; Brosseau grievance*, July 11, 1980. Majority: O'Shea, Carrier—17 pages; dissent: Stone—3 pages. (117)

**Travel Allowance**

Call out for repairs—travel allowance payable though employee not required to report until next morning; grievance allowed. *Re Falconbridge Nickel Mines Limited and Sudbury Mine, Mill and Smelter Workers Union, Local 598; Smith grievance*, July 10, 1980. H.D. Brown—9 pages. (118)\*

**Vacation**

Eligibility—"temporary employee" not "in service" of employer during lay-off; grievance dismissed. *Re Metropolitan Toronto, Municipality of, and Metropolitan Toronto Civic Employees Union, Local 43; Boynton grievance*, July 11, 1980. Majority: Brunner, Murray—7 pages; dissent: Tate. (119)

Transfer from full-time employee to part-time employee—seniority rights terminated; grievance dismissed. *Re Northumberland County (Golden Plough Lodge) and Canadian Union of Public Employees, Local 1748; Van Slyke grievance*, June 23, 1980. Majority: Kruger, Billings—8 pages; dissent: Wrightman—2 pages. (120)

**Vacation Pay**

Calculation where wage increases occurring during vacation—no provision for taking into account future wage increases; grievance dismissed. *Re American Can of Canada Limited and Can Workers' Federal Union, Local 535; group grievance*, July 18, 1980. Majority: Weatherill, Archer—11 pages; dissent: Biggs—1 page. (121)

**Wages**

Deferred income to be included in calculation of average weekly income for year income earned—grievance allowed. *Re Humpty Dumpty Foods Limited and Milk and Bread Drivers, Dairy Employees, Caterers and Allied Employees, Local 647; La Croix grievance*, June 19, 1980. McLaren—12 pages. (122)

Paid lunch break claimed—employees paid for eight hours of eight and one-half hour shift; no violation of collective agreement provision requiring lunch break "without loss of earnings"; grievance dismissed. *Re P.C. Drop Forgings Limited and United Steelworkers of America, Local 8190; union grievance*, July 23, 1980. Majority: Weatherill, Byers—7 pages; did not concur: Wadden. (123)

**Welfare Plans**

Medical certificate—right of employer to require independent medical certification as a condition to availability of benefits not provided under collective agreement; grievance allowed. *Re Certified Automotive Products Limited and United Steelworkers of America, Local 14831; Roma and policy grievance*, July 18, 1980. Baum—8 pages. (124)

Vision plan—subject to twenty-four month limitation; grievance denied. *Re De Havilland Aircraft of Canada Ltd. and United Automobile Workers, Local 112; policy grievance*, July 18, 1980. Gorsky—9 pages. (125)

Sick leave—collective agreement provides for premium payment for only one month following leave of absence; definition of leave of absence includes absence because of sickness and accident; grievance dismissed. *Re Charles Laue Limited and United Automobile Workers, Local 195; policy grievance*, July 15, 1980. Weatherill—9 pages. (126)

Sick pay plan to come into effect upon employee's completion of one year of service; payments to be reduced after third absence in a calendar year—grievor claims that penalty provision reducing payments does not begin to operate until after an employee's first year of service; grievance allowed. *Re Union Gas Limited and Oil, Chemical and Atomic Workers International Union; Hurst-Archer grievance*, July 2, 1980. Majority: Rayner, Rogers—7 pages; dissent: Phelps—3 pages. (127)

**Work Assignment**

Change of work system—claim for compensation dismissed as nature of grievor's employment making it impossible to determine damages; order for specific performance of letter of agreement. *Re Humpty Dumpty Foods Limited and Retail, Wholesale and Department Store Union, Local 461; Gervais grievance*, July 14, 1980. H.D. Brown, Rovet, Spaxman—7 pages. (128)

Requirement to fill specified number of vice-principal positions—requirement met; grievance dismissed. *Re Board of Education for the City of Windsor and Statutory Members of the Federation of Women Teachers' Associations of Ontario and the Public School Men Teachers' Federation; policy grievance*, June 30, 1980. Majority: Hinnegan, Bartlet—5 pages; dissent: Felker. (129)

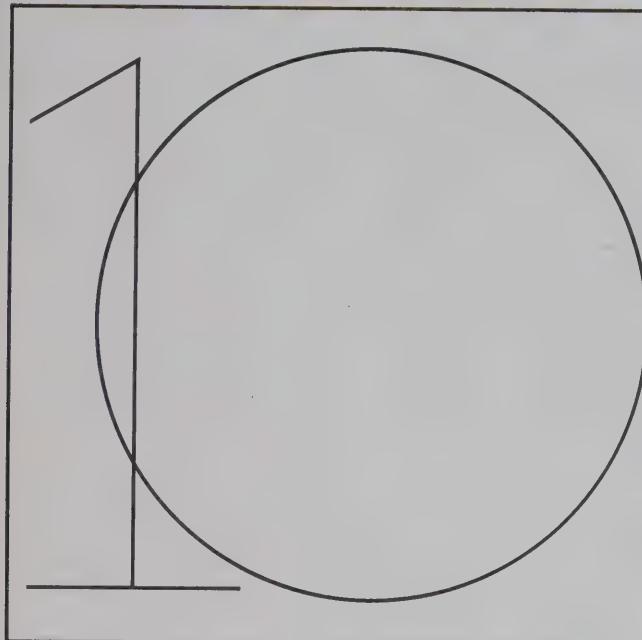
Work performed by employees of another company—working pertaining to other employer; grievance dismissed. *Re Essex Terminal Railway Company and Brotherhood of Maintenance of Way Employees; union grievance*, July 25, 1980. Weatherill—6 pages. (130)

Duties of bargaining unit job assigned to manager—removal of confidential duties reasonable; grievance dismissed. *Re Duo-Matic/Olsen Inc. and United Steelworkers of America, Local 8222; Kemble grievance*, July 14, 1980. O'Shea—12 pages. (131)

Reassignment because of inability to speak French—employer bound by requirement of *Official Languages Act*; grievance dismissed. *Re National Arts Centre Corporation and Hotels, Clubs, Restaurants, Taverns Employees' Union, Local 261; Schwindel grievance*, July 14, 1980. Majority: O'Shea, Laishley—15 pages; dissent: McCarthy. (132)

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# Monthly Bulletin



## Office of Arbitration

Miss Jean M. Read, Director.



Ontario Ministry of Labour  
400 University Avenue, 6th Floor  
Toronto, Ontario  
M7A 1T7  
Tel. (416) 965-5669

Hon. Robert Elgie, M.D., Minister  
T.E. Armstrong, QC, Deputy Minister

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## Appointment of Arbitrators

Forms for requests for appointment of arbitrator under section 37a of *The Labour Relations Act* are available on request, from the Office of Arbitration.

## Arbitrators

Professor Kenneth P. Swan, Faculty of Law, Queen's University, Kingston, Ontario, K7L 3N6; telephone (613) 547-5860, has returned from sabbatical and is again available for arbitrations.

## Changes of Address

The following changes should be noted, effective immediately:

Mr. S. Tupper Bigelow, Q.C., Suite 311, 40 Sylvan Valleyway, North York, Ontario, M5M 4M3; telephone (416) 783-9956.

Mr. N.M. May, Q.C., 390 Bay Street, 5th Floor, Toronto, Ontario, M5H 2Y2; telephone (416) 862-9155.

**Awards**

The following awards were filed with the Office of Arbitration during the month of August, 1980.

The summary was prepared at the Faculty of Law, Queen's University, under the supervision of C.G. Simmons, B.A., B.C.L., LL.M.; D.D. Carter, B.A., B.C.L., LL.B.; and K.P. Swan, P. Eng., LL.B.

\* Indicates award to be reported in full or in part in *Labour Arbitration Cases*.

† Indicates award issued under section 37a of *The Labour Relations Act*.

**Arbitrability**

Section 37a—not arbitrable if request made beyond time limits in agreement; no power to extend time limits. *Re Radio Shack Division, Tandy Electronics, and United Steelworkers of America; Mathews, Hiltz grievance*, August 6, 1980. Simmons—10 pages. (1)\*†

**Bereavement Leave**

Bereavement occurring during vacation—bereavement clause not operative; grievance dismissed. *Re Gray Forgings and Stampings Ltd. and International Union of Electrical, Radio and Machine Workers, Local 557; Ridd grievance*, July 31, 1980. Majority: Shime, Glass—7 pages; dissent: Knipfel. (2)\*

**Casual Employee**

Termination of employment—employee entitled to be paid until end of shift; grievance allowed in part. *Re Exhibit and Display Association of Canada, on behalf of its member companies, and Labourers' International Union of North America, Local 506; Dixon grievance*, August 7, 1980. Brunner—12 pages. (3)

**Classification**

Overlap of duties—higher classification appropriate. *Re Mattawa, Corporation of the Town of, and Canadian Union of Public Employees, Local 1465; Dobratz grievance*, June 27, 1980. Majority: Duchesneau-McLachlan, Belanger—4 pages; dissent in part: Swindle. (4)

Physical disability impairing ability to perform full range of duties—grievors still within classification and pay reduction improper; grievance allowed. *Re St. Lawrence Cement Company and United Cement, Lime and Gypsum Workers International Union, Local 366; Gazzala et al grievance*, July 28, 1980. Majority: Palmer, Nokes—8 pages; dissent: Bertuzzi—2 pages. (5)\*

Reassignment of job duties to another classification—found not to be in violation of job description clause but an exercise of management rights; grievance dismissed. *Re Mueller, Limited, and United Automobile Workers, Local 456; Walker grievance*, July 29, 1980. McLaren—11 pages. (6)

**Collective Agreement**

Legislative continuation of agreement—*The School Boards and Teachers Collective Negotiations Act* extends terms and conditions of collective agreement and not the agreement; grievance dismissed. *Re Ottawa Board of Education and Ontario Branch Affiliates of the Federations of Women Teachers of Ontario and Ontario Public School Men Teachers' Federation and L'Association des Enseignants Franco-Ontariens; Brown grievance*, August 5, 1980. Palmer, Chodos, Nelligan—13 pages. (7)

Memorandum of settlement—execution of settlement established; grievance allowed with compensation. *Re Canadian Industries Limited, Nobel Works, and United Steelworkers of America, Local 13704; company grievance*, August 5, 1980. Majority: O'Shea, Storie—23 pages; dissent: Hurst. (8)

**Discharge**

Absence without notice alleged—grievor fulfilled notification requirements and continued to notify employer; grievance allowed. *Re Steel Company of Canada Limited, Burlington Works Continuous Rod Processing Plant, and United Steelworkers of America, Local 8460; Bains grievance*, August 26, 1980. Majority: H.D. Brown, Hind—19 pages; dissent: Reisteller—1 page. (9)

Absenteeism—employer waiving rights under collective agreement; grievance allowed. *Re University Hospital, London, and London and District Service Workers' Union, Local 220; Irvine grievance*, July 17, 1980. R.J. Roberts, Stansel, Switzman—13 pages. (10)

Absenteeism—extreme nature of absence and culminating incident; grievance dismissed. *Re Ross Memorial Hospital, Lindsay, Ontario, and Canadian Union of Public Employees, Local 1909; Tripp grievance*, August 5, 1980. Majority: O'Shea, Osler—22 pages; dissent: Richards. (11)

Absenteeism—grievor's record not precluding improvement; grievance allowed in part. *Re Labatt's Ltd. and International Brewery Workers Union, Local 304; Burton grievance*, August 19, 1980. Gorsky—15 pages. (12)

Absenteeism—incapacity to regularly attend work in future not established; reinstatement with partial compensation. *Re Phillips Cables Limited and International Union of Electrical, Radio and Machine Workers of America, Local 510; Colterman grievance*, August 7, 1980. Majority: Simmons, Nabi—18 pages; dissent: Philips—4 pages. (13)

Abuse of mentally retarded child under grievor's care and control—grievance dismissed. *Re Metropolitan Toronto School Board and Canadian Union of Public Employees, Local 1874; Kendall grievance*, August 9, 1980. Dunn, Noble, White—5 pages. (14)

Alcoholism—grievor taking no concrete step to remedy problem; grievance dismissed. *Re Canadian Pacific Limited and Brotherhood of Railroad Signalmen; Pellow grievance*, July 24, 1980. O'Shea—22 pages. (15)\*

Alcoholism and nervous condition—grievor taking action dangerous to himself and others, no realistic chance of improvement; grievance dismissed. *Re Libby-St. Clair Inc., Wallaceburg, Ontario, and United Glass and Ceramic Workers of North America, Local 235; Thibert grievance*, August 1, 1980. Majority: Ianni, Sanderson—11 pages; dissent: Vellinga—1 page. (16)

Culminating incident—degree of negligence present but not sufficient to warrant penalty; discharge reduced to three-week suspension without pay. *Re Firestone Canada Ltd. (Hamilton Plant) and United Rubber, Cork, Linoleum and Plastic Workers of America, Local 113; Morris grievance*, July 17, 1980. Brunner—10 pages; partial dissent: Switzman—3 pages; dissent: Furlong—1 page. (17)

Culminating incident—substitution of lesser penalty not appropriate; grievance dismissed. *Re Mississauga, Corporation of the City of, Transit Department, and Amalgamated Transit Union, Local 1572; Meecham grievance*, August 14, 1980. Majority: McIver, McKillop—20 pages; dissent: Austin. (18)

Failure to complete qualifications of apprenticeship—status of temporary employee; grievance dismissed. *Re International Tools (1973) Limited and Windsor Mouldmakers Union, Local 1680; Derrig grievance*, July 28, 1980. Rubenstein—15 pages. (19)

Failure to complete qualifications of apprenticeship—status of temporary employee; grievance dismissed. *Re International Tools (1973) Limited and Windsor Mouldmakers Union, Local 1680; Kirchoefer grievance*, July 29, 1980. Rubenstein—5 pages. (20)

Failure to fulfil conditions of previous arbitration award; discharge of grievance confirmed. *Re American Motors (Canada) Limited and United Automobile Workers; Schneider grievance*, July 31, 1980. Teplitsky—2 pages. (21)

Insubordination; culminating incident—grievor having ample notice of need for reform; grievance dismissed. *Re Extendicare Ltd. and Service Employees Union, Local 532; Cabral grievance*, August 6, 1980. R.J. Roberts—8 pages. (22)†

Possession of company property—civil standard applicable; grievance dismissed. *Re Drug Trading Company Limited and Canadian Chemical Workers Union, Local 11; Diljohn grievance*, August 15, 1980. O'Connor—9 pages. (23)†

Theft—civil standard appropriate; grievance dismissed. *Re Texaco Canada Inc. and Oil, Chemical and Atomic Workers International Union, Local 9-599; Sobars grievance*, August 15, 1980. Majority: Saltman, Furlong—27 pages; dissent: Edwards—4 pages. (24)

**Discipline**

Absenteeism—likelihood of improved attendance; grievance allowed in part. *Re Kralinator Filters Division and United Steelworkers of America, Local 4605; MacLellan grievance*, July 30, 1980. Shime—3 pages. (25)

Altercation with fellow employee resulting in a five-day suspension—grievance upheld. *Re C.I.L. Paints Inc. and United Steelworkers of America, Local 13328; Nikalaou grievance*, August 8, 1980. Palmer—9 pages. (26)

Altercation with fellow worker—incident in violation of company rules; past disciplinary record considered; grievance dismissed. *Re Scholl (Canada) Inc. and Canadian Chemical Workers Union, Local 9; Crawford grievance*, August 20, 1980. Majority: H.D. Brown, Werry—13 pages; dissent: McIlwain. (27)

Breach of company rules—thirty-day suspension; five-day suspension substituted. *Re Air Canada and Canadian Air Line Employees' Association; Rancourt grievance*, August 15, 1980. P. Picher—16 pages. (28)

Careless work performance; grievor's error meriting minor discipline; grievance dismissed. *Re Steel Company of Canada Limited, Hilton Works, and United Steelworkers of America, Local 1005; Fuciarelli grievance*, July 21, 1980. Majority: Palmer, Baker—10 pages; dissent: Marshall. (29)

Insubordination alleged—refusal of order justified because of illness; grievance allowed. *Re General Freight Division of Alltrans Express Limited and Teamsters, Local 938; St. Onge grievance*, August 12, 1980. Majority: Burkett, Petryshen—13 pages; dissent: Peplow—5 pages. (30)

Leaving job without foreman's permission—written warning and one-day suspension; grievance sustained. *Re Steel Company of Canada Limited, Hilton Works, and United Steelworkers of America, Local 1005; Dunn and Tynan grievance*, July 29, 1980. Majority: Burkett, Marshall—13 pages; dissent to follow: Beresford. (31)

Notification of return to work following sickness—failure to notify not established; grievances allowed with compensation. *Re Brendan Construction Limited and United Steelworkers of America, Local 7578; Vaillancourt and Vaillancourt grievances*, August 1, 1980. O'Shea—13 pages. (32)

Picket-line conduct resulting in suspension—lesser discipline substituted. *Re Bell Canada and Communications Workers of Canada; Hamilton and Scott grievance*, August 26, 1980. Majority: Beatty, Walsh—8 pages; dissent: Churchill-Smith—4 pages. (33)

Refusal to perform scheduled overtime—inadequate notice of refusal; grievance dismissed. *Re Bell Canada and Communications Workers of Canada; Mullin grievance*, August 11, 1980. Majority: M. Picher, Healy—16 pages; dissent to follow: Switzman. (34)

Refusal to work because of heat—employees not acting unreasonably; grievance allowed. *Re Rockwell International of Canada Limited and International Molders and Allied Workers Union; weather clause grievance*, June 30, 1980. Teplitsky, Byers, Hardy—5 pages. (35)

Unauthorized use of equipment—lesser penalty substituted. *Re Erie Iron Works Company Limited and International Association of Machinists and Aerospace Workers, Local 1861; MacEwen grievance*, July 31, 1980. Majority: Hinnegan, Carter—9 pages; dissent: O'Toole—3 pages. (36)

Work performance unsatisfactory—one-day suspension; grievance dismissed. *Re Steel Company of Canada Limited, Hilton Works, and United Steelworkers of America, Local 1005; Seniunas grievance*, May 16, 1980. Majority: Burkett, Beresford—17 pages; dissent: Marshall. (37)

**Estoppel**

Payment of shift bonus while attending training course—employer's payment of bonus creating promissory estoppel; bonus cannot be discontinued without notice; grievances allowed. *Re Metropolitan Toronto, Municipality of, and Metropolitan Toronto Civic Employees Union, Local 43; Spencley and group grievances*, August 11, 1980. Samuels—7 pages. (38)

**Grievance Procedure**

Abuse of process—employer entitled to take reasonable measures to deal with multiple grievances. *Re Bell Canada and Communications Workers of Canada; Karpowech and Speck grievances*, July 9, 1980. Beck, Walsh, Healy—14 pages. (39)\*

Settlement—unanimous decision of grievance committee not a settlement; grievance arbitrable. *Re University of Ottawa and Association of Professors of University of Ottawa; union grievance*, August 15, 1980. Majority: Kennedy, Stewart—13 pages; dissent: Craven—2 pages. (40)

**Holidays**

Designated holidays; employees not paid for holidays not worked—collective agreement not providing procedures for payment; grievance dismissed. *Re Greater Niagara General Hospital and Ontario Public Service Employees Union; union grievance*, May 26, 1980. Majority: Teplytsky, Dixon—7 pages; dissent: Cochrane—3 pages. (41)

**Holiday Pay**

Qualifying days: statutory holiday falling within vacation period—entitlement to extra day of paid vacation not contingent on working the day before and after holiday; grievances allowed. *Re Gray Forgings and Stampings Limited and International Union of Electrical, Radio and Machine Workers, Local 557; Chaaran, Beattie, Clark, Calver, Russell grievances*, August 26, 1980. Majority: H.D. Brown, Knipfel—10 pages; dissent: Glass—2 pages. (42)

**Illness**

Return to work—grievance allowed subject to confirmatory medical evidence. *Re Algoma Steel Corporation Limited and United Steelworkers of America, Local 2251; Fascina grievance*, July 31, 1980. McLaren, Morley, Schultz—12 pages. (43)

**Interest Arbitration**

Adjudication of terms of renewal of collective agreement. *Re Ontario Housing Corporation and Canadian Union of Public Employees, Local 767*; July 16, 1980. Majority: Beck, Walsh—10 pages; dissent: Winkler—2 pages. (44)

**Job Vacancy**

Temporary vacancy alleged—insufficient additional work to justify vacancy; grievance dismissed. *Re Canadian National Railways, Telecommunications Division, and Canadian Brotherhood of Railway, Transport and General Workers, Canadian Telecommunications Division; Chalmers grievance*, August 26, 1980. Majority: Beatty, Mathews—10 pages; dissent: Walsh—2 pages. (45)

**Lay-off**

Medical condition necessitating transfer is not lay-off or termination—bumping rights cannot be invoked; preliminary objection allowed. *Re Consolidated-Bathurst Packaging Limited and International Woodworkers of America, Local 2-69; Hill grievance*, August 22, 1980. Majority: Saltman, Rogers—11 pages; dissent: Bekerman. (46)

Propriety of lay-off—failure to agree on lay-off issue forgoes further negotiation of procedure; grievances dismissed. *Re Customs Excise Union Duane's Accise and Office and Professional Employees' International Union, Local 225; Henderson, Desjardins, Newman grievances*, August 26, 1980. Curtis—12 pages. (47)

Qualifications—grievors not as qualified as junior employees; grievance dismissed. *Re Borden Foods, Division of Borden Company Limited, and Retail, Wholesale and Department Store Union, Local 440; Mabee and MacGinnis grievance*, August 21, 1980. Kennedy—11 pages. (48)

**Management Rights**

Removal of privileges—employer's unilateral alterations not unreasonable or inconsistent with collective agreement; grievance dismissed. *Re Worthington (Canada) Limited and International Association of Machinists and Aerospace Workers, Local 1673; policy grievance*, June 12, 1980. Brunner, Craig, Lewis—9 pages; addendum: Lewis—2 pages. (49)

**Overtime**

Remedy where improper distribution—damages appropriate when employee loses opportunity to work because of poor administration; grievance allowed. *Re Massey-Ferguson Industries Limited and United Automobile Workers; Barsuk grievance*, August 7, 1980. O'Connor—16 pages. (50)

**Probationary Employee**

Termination—onus of proof for suitability rests on union; grievance dismissed. *Re Thunder Bay, Corporation of City of, and Canadian Union of Public Employees, Local 87; company objection*, August 11, 1980. Majority: Duchesneau-McLachlan, Holt—33 pages; dissent: Simpson. (51)

**Promotion**

Qualifications—compatibility of employee relevant; grievance dismissed. *Re Salvation Army Grace Hospital, Windsor, Ontario, and Service Employees' International Union; Milling grievance*, July 30, 1980. Majority: Davidson, Burnell—8 pages; dissent: McConville. (52)

Qualifications—grievor lacking knowledge required for job; grievance denied. *Re Thunder Bay, Corporation of City of, and Canadian Union of Public Employees, Local 87; Shanks grievance*, July 28, 1980. Majority: Duchesneau-McLachlan, Holt—11 pages; dissent: Simpson. (53)

Qualifications—grievors' experience and seniority not properly considered by management as required under collective agreement; grievance allowed. *Re Fanshawe College and Ontario Public Service Employees Union; Hoy, Groom and Williams grievance*, August 6, 1980. Majority: Palmer, Switzman—26 pages; dissent: Wright—2 pages. (54)

Trial period—fair trial not provided; grievance allowed. *Re Canadian Car Division, Hawker Siddeley Canada Limited, and Office and Professional Employees' International Union, Local 81; Thatcher grievance*, August 8, 1980. Bicknell—15 pages. (55)

**Res Judicata**

Previous award found manifestly wrong—entitlement to premium pay rejected by Board; *stare decisis* does not apply; grievance dismissed with compensation. *Re Steel Company of Canada Limited, Hilton Works, and United Steelworkers of America, Local 1005; group grievance*, July 31, 1980. Majority: McLaren, Storie—25 pages; dissent: Sharp—3 pages. (56)\*

**Scheduling of Work**

Claim for optional shift not worked by grievors; change in work-scheduling claimed to have resulted in grievors' failure to work—grievance dismissed. *Re Borough of York, Corporation of, and Canadian Union of Public Employees; group grievance*, August 6, 1980. P. Picher, Paulin, Lewis—19 pages; addendum: Paulin—2 pages. (57)

**Sick Pay**

Entitlement to sick pay and holiday pay for same day—both benefits found mutually exclusive; grievor entitled to both; grievance allowed. *Re North York General Hospital and Ontario Nurses' Association; Mokedanz grievance*, July 29, 1980. Majority: Shime, Switzman—13 pages; dissent: Macdougall—3 pages. (58)\*

**Travel Allowance**

"Accustomed work location"—location changed as result of transfer; grievance dismissed. *Re Georgian College of Applied Arts and Technology and Ontario Public Service Employees Union; Metcalfe grievance*, August 1, 1980. Burkett, Hallsworth, Robins—11 pages; addendum: Robins—2 pages. (59)

**Tuition**

Waiver of tuition—not applicable to special school; grievance dismissed. *Re University of Ottawa and Association of Professors of University of Ottawa; union grievance*. See (40), *supra*. (60)

**Union Officials**

Discrimination—union president denied upgrading on grounds that union duties result in frequent absenteeism; grievance allowed. *Re Canadian General Electric Company Limited and International Union of Electrical, Radio and Machine Workers; Loucks grievance*, August 15, 1980. Majority: P. Picher, Goodman—25 pages; dissent: Sargeant—5 pages. (61)\*

**Vacations**

Scheduling—employer's discretion exercised unreasonably; grievance allowed. *Re Whitby Boat Works Limited and United Brotherhood of Carpenters and Joiners of America, Local 2679; Brunner grievance*, August 7, 1980. O'Shea—23 pages. (62)\*†

**Vacation Pay**

Calculation—cut-off date not in accordance with collective agreement; grievance allowed. *Re Matheson International Trucks Limited and United Automobile Workers, Local 641; union grievance*, July 18, 1980. Abbott—7 pages. (63)

Entitlement—absence on Workmen's Compensation not relevant; grievance allowed. *Re Union Gas Limited and Oil, Chemical and Atomic Workers' International Union, Local 9758; Kincaid grievance*, July 29, 1980. Majority: McLaren, Rogers—16 pages; dissent: Storie—4 pages. (64)\*

Entitlement—lay-off not reducing entitlement; grievance allowed. *Re Temiskaming Hospitals and Canadian Union of Public Employees, Local 904; Deveault grievance*, June 23, 1980. Teplitsky, Belanger, Buckland—5 pages. (65)

Entitlement of laid-off employee—not a terminated employee; grievance allowed. *Re Matheson International Trucks Limited and United Automobile Workers, Local 641; union grievance*, July 18, 1980. Abbott—11 pages. (66)

Entitlement while on indemnity—double payment not relevant; grievance allowed. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 414; Joncas grievance*, August 15, 1980. Majority: Kennedy, Spaxman—11 pages; dissent: Sargeant. (67)

**Welfare Plans**

Liability for benefit—collective agreement clause makes employer liable for payment of premiums and benefits; grievance allowed. *Re Olsonite Manufacturing Limited and United Automobile Workers, Local 195; group grievance*, August 7, 1980. Simmons—13 pages. (68)

**Work Assignment**

Bargaining unit work performed by supervisors—collective agreement clear that availability of bargaining unit employees not relevant; grievance allowed. *Re Thibodeau-Finch Express Limited and Teamsters Union, Local 938; Ducklow grievance*, August 8, 1980. Majority: Brent, Petryshen—9 pages; dissent: Peplow—2 pages. (69)

Bargaining unit work performed by supervisors—grievance upheld. *Re Becker Milk Company Limited and Teamsters, Local 647; union grievance*, August 7, 1980. Burkett—31 pages. (70)

Non-bargaining unit employee performing certain work—work not customarily performed by members of bargaining unit; grievance dismissed. *Re Algoma Contractors Limited and United Steelworkers of America, Local 4694; union grievance*, August 25, 1980. Majority: Hinnegan, Heller—5 pages; dissent: Schultz. (71)

Reception of goods by non-bargaining unit employees during grievor's holiday—work performed found not bargaining unit work; grievance dismissed. *Re Canadian Rock Salt Company Limited and United Automobile Workers, Local 195; Shortridge grievance*, July 9, 1980. Welling—10 pages. (72)

Supervisor performing bargaining unit work—employee excluded from overtime; grievance upheld. *Re Canadian Salt Company Limited and United Automobile Workers, Local 240; Campeau grievance*, August 19, 1980. Hinnegan—7 pages. (73)

Transfer of work outside of classification—company bound by mutually agreed procedures; grievance allowed. *Re Allied Chemical and United Automobile Workers, Local 89; union grievance*, July 31, 1980. Kruger—7 pages. (74)

Working foreman—no evidence presented to show management doing unit work; grievance dismissed. *Re Windsor Raceway Holdings Limited and Service Employees Union, Local 210; policy grievance*, July 22, 1980. Shime, Bartlet, Lewis—3 pages. (75)

The following awards in interest arbitrations under *The Hospital Labour Disputes Arbitration Act* were also filed with the Office of Arbitration during the months of July and August, 1980.

*Baycrest Hospital and Ontario Nurses' Association (full-time and part-time)*, Brent—17 pages; partial dissent: Harris—1 page; partial dissent: Paliare—2 pages.

*Belleville General Hospital and Ontario Nurses' Association (full-time and part-time)*, Willes, Walsh—25 pages; partial dissent: Laing—1 page.

*Humber Memorial Hospital and Ontario Nurses' Association*, Saltman, Cruickshank—20 pages; partial dissent: Goudge—2 pages.

*Nel-Gor Castle Nursing Home and Canadian Union of Public Employees (full-time and part-time)*, Teplitsky, McNaughton, Whitney—5 pages.

*Northwestern General Hospital and Ontario Nurses' Association*, Davidson—10 pages; partial dissent: Billings—2 pages; partial dissent: Goudge—4 pages.

*Palmerston Town Manor and Canadian Union of Public Employees, Local 2037*, Teplitsky—8 pages; dissent: Lewis—8 pages; dissent: Humphrey—3 pages.

*Perley Hospital and Canadian Union of Public Employees, Local 870* (supplementary award), H.D. Brown, Switzman, Whittaker—5 pages.

*Plummer Memorial Public Hospital and Ontario Nurses' Association (full-time and part-time)*, R.J. Roberts, Switzman—12 pages; addendum: Switzman—1 page; partial dissent: Todd—1 page.

*Scarborough General Hospital and Ontario Nurses' Association*, Baum, Walsh—13 pages; partial dissent: Filion—7 pages; addendum: Walsh—1 page.

*Scarborough General Hospital and Ontario Nurses' Association* (supplemental award), Baum, Walsh—2 pages; dissent: Filion—2 pages.

*Timmins, City of, Home for the Aged (Golden Manor) and Canadian Union of Public Employees, Local 1140*, Linden, Baldwin, Switzman—11 pages; addendum: Switzman—1 page.

*Victoria Hospital Corporation and Ontario Nurses' Association, Local 100 (part-time)*, Verity, Goudge—13 pages; dissent: Belford—6 pages.

*Waterloo, Regional Municipality of, and London and District Service Workers' Union (full-time at Sunnyside Home)*, Waisglass, Walsh, Boehmer—4 pages.

The awards may be seen at the Office of Arbitration, 400 University Avenue, 6th Floor, Toronto. Copies of awards may be obtained for a fee of 50 cents per page. Orders will be filled on receipt of an application and a cheque or money order payable to the Treasurer of Ontario for the applicable amount, which should be forwarded to: Cashier's Office, Ministry of Labour, 400 University Avenue, Toronto, Ontario, M7A 1T7.

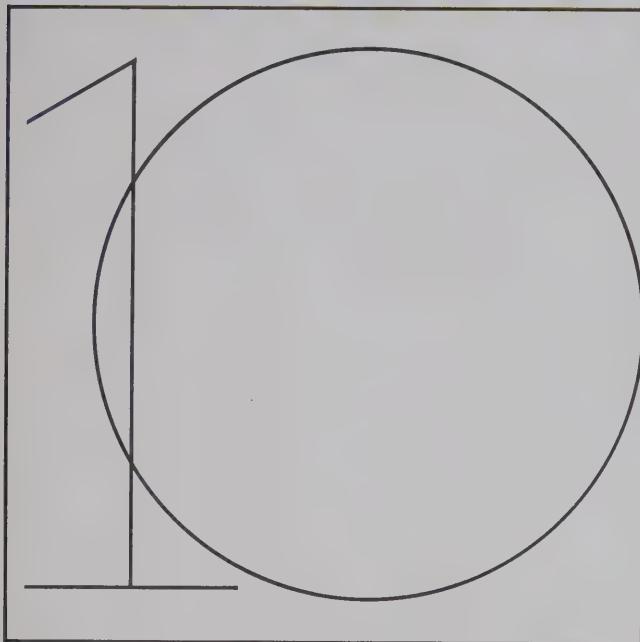
#### Filing Awards

The attention of chairmen of boards of arbitration and sole arbitrators is drawn to the regulations under *The Labour Relations Act* which require every arbitrator to file a copy of his award with the Office of Arbitration within ten days of issuing such award.

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# Monthly Bulletin



Office of Arbitration



Ontario

Miss Jean M. Read, Director.

Ontario Ministry of Labour  
 400 University Avenue, 6th Floor  
 Toronto, Ontario  
 M7A 1T7  
 Tel. (416) 965-5669

Hon. Robert Elgie, M.D., Minister  
 T.E. Armstrong, QC, Deputy Minister

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 Office of Arbitration as a service to  
 persons involved in labour-management  
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#### Appointment of Arbitrators

Forms for requests for appointment of arbitrator under section 37a of *The Labour Relations Act* are available on request, from the Office of Arbitration.

#### Change of Address and Telephone Number

The following change should be noted, effective immediately:

Mrs. Maureen Saltman, Suite 1555, 55 University Avenue, Toronto, Ontario, M5J 2H7; telephone (416) 367-1417.

#### Awards

The following awards were filed with the Office Of Arbitration during the month of September, 1980.

The summary was prepared at the Faculty of Law, Queen's University, under the supervision of C.G. Simmons, B.A., B.C.L., LL.M.; D.D. Carter, B.A., B.C.L., LL.B. and K.P. Swan, P. Eng., LL.B.

\* Indicates award to be reported in full or in part in *Labour Arbitration Cases*.

†Indicates award issued under section 37a of *The Labour Relations Act*.

#### Arbitrability

Breach of *The Occupational Health and Safety Act* alleged — Act not incorporated into terms of collective agreement; grievance not arbitrable. *Re National Steel Car Corporation and United Steelworkers of America, Local 7135; union grievance*, September 11, 1980. Punnett — 4 pages. (1)†

Interpretation of effect of award of another board — not arbitrable; grievance dismissed. *Re B.P. Oil Limited and Oil, Chemical and Atomic Workers International, Local 9-599; Simmons grievance*, August 8, 1980. Majority: Rayner, Healy — 7 pages; dissent: Edwards — 4 pages; addendum: Healy — 1 page. (2)\*

Reclassification within particular rank — deferral of reclassification subject to arbitral review. *Re Metropolitan Board of Commissioners of Police and Metropolitan Toronto Police Association; association grievance*, August 25, 1980. Adams — 22 pages. (3)

Recovery of money paid to employer to cover loss of funds — matter not covered by collective agreement; grievance not arbitrable. *Re Canada Coach Lines Limited and Amalgamated Transit Workers, Local 107; Moxham grievance*, September 11, 1980. Majority: Palmer, Billings — 11 pages; dissent: Bosnich — 2 pages. (4)

#### Board of Arbitration

Deference to labour relations board — appropriate matter to be referred to Canada Labour Relations Board; board retaining jurisdiction. *Re Bell Canada and Communications Workers of Canada; union grievance*, September 9, 1980. Majority: Adams, Switzman — 19 pages; dissent: Healy. (5)\*

#### Classification

Change of job — classification not changing; grievance allowed. *Re O-Pee-Chee Company Ltd. and International Molders and Allied Workers' Union, Local 49; Robbins, Thornton grievance*, August 10, 1980. Palmer, Pamenter, Wohl — 16 pages. (6)

New classification alleged — substantial and qualitative change; grievance allowed. *Re Victoria Hospital Corporation and Ontario Nurses' Association; association grievance*, September 19, 1980. Majority: Carter, Beaulieu — 9 pages; dissent: Billings — 5 pages. (7)

Painting assigned to production workers — entitlement to higher rate; grievance allowed. *Re Inco Metals Company and United Steelworkers of America; Bronzovich grievance*, September 23, 1980. Majority: Shime, Sharp — 9 pages; dissent: Stone. (8)

Position not falling within classification in present schedule — new rate must be negotiated for reclassified position. *Re Becker Milk Company Limited and Teamsters Local 647; Brunette grievance*, September 11, 1980. Teplitsky — 3 pages. (9)

Prerequisites of higher classification established by employer — onus on employee to satisfy prerequisites; grievance dismissed. *Re Plax Canada Limited and United Rubber, Cork, Linoleum and Plastic Workers of America, Local 1043; Brown grievance*, September 12, 1980. O'Shea — 18 pages. (10)

Revision of job descriptions — changes in job description owing to introduction of new portable videotape recording equipment; grievance allowed. *Re Canadian Broadcasting Corporation and National Association of Broadcast Employees and Technicians; union grievance*, September 3, 1980. Adams — 43 pages. (11)

Transfer to different shift and change of job duties — amounting to demotion, even though no loss of pay; grievance allowed. *Re Canadian Broadcasting Corporation and National Association of Broadcast Employees and Technicians; Hess grievance*, September 18, 1980. Adams — 32 pages. (12)

#### Collective Agreement

Agreement to make every reasonable effort to resolve matter left outstanding — not an interest arbitration clause; grievance dismissed. *Re Canadian Broadcasting Corporation and National Radio Producers Association; policy grievance*, August 26, 1980. Adams — 22 pages. (13)

Retroactivity — provision of lieu time for time spent at conferences on regular day-off retroactive; grievance allowed. *Re Thunder Bay Public Library Board and Canadian Union of Public Employees, Local 1803; policy grievance*, August 28, 1980. Lunney, Simpson, Holt — 24 pages; addendum: Holt — 1 page. (14)

#### Cost of Living Allowance

Annual maximum adjustment — adjustment cumulative; grievance allowed. *Re Great Lakes Steel Ltd., Thunder Bay, Ontario, and United Steelworkers of America, Local 8697; union grievance*, September 10, 1980. Jecchinis — 8 pages. (15)

Overtime hours — C.O.L.A. applicable to overtime hours not attracting premium payment. *Re Atlas Steels, Division of Rio Algom Ltd., and United Steelworkers of America; union grievance*, September 16, 1980. Shime — 7 pages. (16)\*

#### Damages

Compensation for unjust discharge: loss of voluntary overtime claimed — collective agreement excluding compensation for loss of overtime. *Re Hayes-Dana Limited and United Automobile Workers, Local 676; Gula grievance*, September 2, 1980. H.D. Brown — 7 pages. (17)\*

#### Demotion

Non-disciplinary demotion — grievor unable to do his job satisfactorily; grievance dismissed. *Re Allied Chemical Canada, Limited, and United Automobile Workers, Local 89; Laesser grievance*, August 14, 1980. Rayner — 7 pages. (18)

**Discharge**

Absenteeism — grievor eligible for reinstatement on inactive seniority list; grievance allowed in part. *Re Fiberglas Canada Limited and Amalgamated Clothing and Textile Workers' Union; McCreary grievance*, August 29, 1980. Brandt — 28 pages. (19)

Absenteeism — past pattern justifying dismissal; grievance dismissed. *Re Alcan Canada Products Limited, Kingston Works, and Local 343, United Steelworkers of America; Monaghan grievance*, August 25, 1980. Majority: Palmer, Baldwin — 8 pages; dissent: Wareham. (20)\*

Absenteeism and lateness — no indication of improvement; grievance dismissed. *Re Algoma Steel Corporation, Ltd., and United Steelworkers of America, Local 2251; Lapossie grievance*, August 30, 1980. Majority: Stewart, Morley — 13 pages; dissent: Schultz — 1 page. (21)

Assault in response to racial slurs — lack of candour before board: conditional reinstatement without compensation ordered; grievance allowed in part. *Re Seaway/Midwest Ltd. and Teamsters Union, Local 419; Phrasad grievance*, September 17, 1980. Majority: Brent, Filion — 32 pages; partial concurrence: Krashinsky — 4 pages. (22)

Assault on fellow employee — atmosphere following negotiation of first agreement considered; grievor's lack of disciplinary record considered; suspension substituted. *Re Ethyl Canada Inc. and Energy and Chemical Workers Union, Local 300; Monger grievance*, September 2, 1980. Kennedy — 9 pages. (23)

Culminating incident: unauthorized absence combined with bad record — progressive discipline justifying discharge; grievance dismissed. *Re Canadian Appliance Manufacturing Company Ltd. and United Steelworkers of America, Local 3192; Kane grievance*, September 16, 1980. O'Shea — 19 pages. (24)

Deemed termination of employment for absence without notification — onus on employee to notify employer; grievance dismissed. *Re Kitchens of Sara Lee (Canada) Ltd. and Retail, Wholesale Bakery and Confectionery Workers, Local 461; Bola grievance*, September 15, 1980. H.D. Brown — 8 pages. (25)

Deemed termination for absence without satisfactory reasons — employer acting reasonably; grievance dismissed. *Re Stein-Hall, Limited, and United Steelworkers of America, Local 4696; Broomer grievance*, August 19, 1980. Majority: Kennedy, Baldwin — 12 pages; dissent: Robinson. (26)

Failure to follow instructions — progressive discipline not appropriate; grievance dismissed. *Re Brantford Expositor, Division of Southam Press (Ontario) Ltd., and Southern Ontario Newspaper Guild, Brantford Unit, Local 87; Codd grievance*, September 3, 1980. Majority: Perkins, Clawson — 7 pages; dissent: Tate — 4 pages. (27)

Illegal strike — grievor's position as union official making him more culpable in instigating strike; grievance dismissed. *Re Gabriel of Canada Limited and International Association of Machinists and Aerospace Workers, Local 1295; Latiff grievance*, August 27, 1980. O'Shea — 24 pages. (28)

Insubordination; refusal to comply with order — no previous problems with grievor; grievance allowed in part. *Re Teledyne Still-Man Canada Ltd. and International Molders and Allied Workers Union, Local 28; Piluso grievance*, August 20, 1980. Palmer, Winkler, Wohl — 13 pages. (29)

Insubordination and damage to employer's property — grievor's period of service and past disciplinary record considered; grievance dismissed. *Re Harris Steel Group Inc. and International Association of Bridge, Structural and Ornamental Iron Workers, Shopmen's Local 734; Doucette grievance*, September 7, 1980. O'Shea — 22 pages. (30)

Lateness — progressive discipline applied; grievance dismissed. *Re General Motors of Canada Ltd. and United Automobile Workers, Local 1973; Chavis grievance*, August 20, 1980. Palmer — 7 pages. (31)

Loss of seniority and subsequent dismissal as probationary employee — dismissal of probationary employee not arbitrable under collective agreement; grievance dismissed. *Re Libbey-St. Clair Inc. and United Glass and Ceramic Workers of North America, Local 235; Dionne grievance*, September 8, 1980. Majority: Hinnegan, Baldwin — 15 pages; dissent: Ferguson — 2 pages. (32)\*

Loss of seniority because of absence — failure to warn grievor of consequences; grievance allowed. *Re York-Finch General Hospital and Ontario Public Service Employees Union, Local 565; Page grievance*, September 23, 1980. Majority: Adams, Kearney — 24 pages; dissent to follow: Carrier. (33)\*

Loss of seniority because of absence from work — absence not continuous; grievance allowed. *Re Hanmer Bus Lines Inc. and Canadian Union of Public Employees, Local 895; Scagnetti grievance*, August 14, 1980. Majority: O'Connor, Campeau — 4 pages; dissent: McVey — 1 page. (34)

Marijuana use contrary to company rules — grievance dismissed. *Re Vitafoam Products Canada Limited and United Electrical, Radio and Machine Workers of America, Local 518; Bedward grievance*, August 27, 1980. Majority: O'Shea, Carew — 14 pages; dissent: Bosnich. (35)

Quit alleged — grievor not resigning by leaving work for one day when ill; grievance allowed. *Re Newaygo Forest Products Limited and Lumber and Sawmill Workers Union, Local 2995; Robert grievance*, July 22, 1980. Majority: Duchesneau-McLachlan, Bosnich — 7 pages; dissent: Coughlan — 4 pages. (36)

Theft alleged — employer's burden of proof not met; grievance allowed. *Re Sheraton Centre Limited and Hotel and Club Employees' Union, Local 299; Velonis grievance*, August 26, 1980. Majority: Ord, Tate — 11 pages; dissent: Hassell — 11 pages. (37)

Unsatisfactory performance in training programme — just cause shown; grievance dismissed. *Re Steel Company of Canada Limited, Hilton Works, and United Steelworkers of America, Local 1005; Crompton grievance*, July 3, 1980. Majority: McLaren, Storie — 28 pages; dissent: Valentine — 2 pages. (38)

#### Discipline

Absence from work station because of emergency phone call — reinstatement without compensation. *Re National Auto Radiator Manufacturing Company Ltd. and Local 195, United Automobile Workers; Ceschin grievance*, August 19, 1980. Palmer — 11 pages. (39)

Cessation of work until union representative present for grievance — work stoppage established; one-day suspension upheld. *Re MTD Products Limited and United Automobile Workers, Local 1524; group grievance*, August 11, 1980. Palmer — 17 pages. (40)

Failure to provide reason for absence from work — not constituting insubordination; grievance allowed in part. *Re Worthington (Canada) Limited and International Association of Machinists and Aerospace Workers, Local 1673; McGlinchey grievance*, September 29, 1980. Satterfield, Reistetter, Lewis — 10 pages. (41)

Harrassing telephone calls alleged — telephone caller not identified; grievance allowed. *Re Barton Place Nursing Home and Canadian Union of Public Employees, Local 1565; Greene grievance*, September 5, 1980. Majority: Hinnegan, White — 6 pages; dissent: Sargeant — 2 pages. (42)

Insubordination alleged; long period of service without discipline — written warning removed from grievor's record; grievance allowed. *Re Canadian Rock Salt Company Limited and United Automobile Workers, Local 195; Capaldi grievance*, September 6, 1980. Rubenstein — 16 pages. (43)

Insubordination alleged; refusal to follow orders — one-day penalty not excessive; grievance dismissed. *Re Cadbury Division, Whitby, and Teamsters Local 647; Benny grievance*, September 12, 1980. Teplitsky — 6 pages. (44)

Insubordination: refusal to follow order — order not sufficiently precise; grievance allowed. *Re Niagara, Regional Municipality of, and Canadian Union of Public Employees, Local 1287; Swartz grievance*, August 18, 1980. Majority: J.L. Roberts, Marshall — 16 pages; dissent: Anderson — 2 pages. (45)

Insubordination: refusal to perform work assignment — reasonable fear for personal safety; grievance allowed. *Re Consolidated-Bathurst Packaging Limited and International Woodworkers of America, Local 2-242; Haines grievance*, August 25, 1980. Majority: Ellis, Schachter — 8 pages; dissent: Rogers — 4 pages. (46)

Insubordination; refusal to perform work assignment and abusive language — grievance dismissed. *Re Dupont of Canada Limited and International Chemical Workers Union, Local 166; McLean grievance*, September 22, 1980. Majority: H.D. Brown, Cook — 12 pages; dissent: Sloan. (47)

Insubordination, refusal to work, misuse of communication equipment — past discipline record considered; grievance dismissed. *Re Griffith Mine, Pickands Mather and Company, Managing Agent, and United Steelworkers of America, Local 7020; Szaflik grievance*, September 12, 1980. O'Shea — 12 pages. (48)

Negligence resulting in accident — grievance dismissed. *Re Sherman Mine, Cliffs of Canada, Limited, Manager, and United Steelworkers of America; Johnson grievance*, September 2, 1980. Brunner — 9 pages. (49)

Poor attitude alleged — lack of communication not solely the grievor's responsibility; grievance allowed. *Re Nipigon District Memorial Hospital and Ontario Nurses' Association; Kennedy grievance*, August 27, 1980. Majority: McCulloch, Beaulieu; dissent: Holt. (50)

Work performance unsatisfactory; uncooperative attitude — employer partly responsible for attitude; suspension reduced. *Re Firestone Steel Products of Canada and United Automobile Workers, Local 27, Unit 17; Nash grievance*, September 16, 1980. Welling — 9 pages. (51)

#### Health and Safety

Protective clothing not provided — employees not requesting clothing; employer not liable for grievors' clothing. *Re Falconbridge Nickel Mines Ltd. and Sudbury Mine, Mill and Smelter Workers Union, Local 598; Caesar et al grievance*, August 6, 1980. Majority: Brunner, Valin — 8 pages; dissent: Tester — 6 pages. (52)

**Holiday Pay**

Qualifying days — grievor laid-off on what would be otherwise a working day; grievance allowed. *Re Raybestos-Manhattan (Canada) Ltd. and United Steelworkers of America; Cowling grievance*, August 22, 1980. O'Shea — 13 pages. (53)

**Hours of Work**

Saturday shift premium — work performed after midnight found to be an extension of regularly scheduled Friday work and not a Saturday shift; grievance dismissed. *Re Dominion Bridge Company Limited and United Steelworkers of America, Local 3390; group grievance*, August 26, 1980. Adams — 12 pages. (54)\*

**Illness**

Return to work — conflicting medical opinions on fitness for work; grievance allowed in part. *Re Steel Company of Canada Limited, Gananoque Works, and United Steelworkers of America, Local 3208; Thompson grievance*, August 13, 1980. Majority: H.D. Brown, Murray — 20 pages; dissent: Curtis. (55)

**Jos Posting**

Job openings of less than thirty days — job posting procedure not applicable. *Re Cooper Tool Group Limited and United Steelworkers of America, Local 6709; McKnight grievance*, August 27, 1980. O'Shea — 20 pages. (56)

**Lay-off**

Bumping rights — members of full-time bargaining unit not entitled to bump members of part-time bargaining unit. *Re Radio Shack Division, Tandy Electronics Limited, and United Steelworkers of America; Courtois, McAllister grievance*, August 22, 1980. Carter — pages. (57)\*†

Bumping rights violated — partial failure to mitigate; grievance allowed but damages reduced. *Re O & K Orenstein & Koppel Canada Limited and Local 1740, International Association of Machinists and Aerospace Workers; Straughan grievance*, August 11, 1980. Majority: Brunner — 16 pages, Tate, with an addendum — 1 page; dissent to follow: MacDermid. (58)

Qualifications: physical capacity to perform job — ability of women employees relatively equal; grievance allowed. *Re Radio Shack Division, Tandy Electronics Limited, and United Steelworkers of America; Courtois, McAllister grievance*. See (57), *supra*. (59)\*†

Qualifications: seniority subject to reasonable consideration of qualifications — reasonable consideration given except in case of one grievor. *Re Abitibi Paper Company Ltd., Iroquois Falls Division, and Lumber and Sawmill Workers' Union, Local 2995; union grievance*, July 25, 1980. Majority: O'Connor, Filion — 14 pages; partial dissent: Wren. (60)

Qualifications: trial period — no entitlement to trial period; grievance dismissed. *Re Canadian Appliance Manufacturing Company Limited and United Steelworkers of America, Local 3129; Melidy grievance*, September 23, 1980. O'Shea — 13 pages. (61)

Redistribution of grievor's work among several employees — constituting a lay-off rather than transfer; grievance dismissed. *Re John Wood Limited and United Automobile Workers, Local 124; Competiello grievance*, September 16, 1980. Brandt — 10 pages. (62)\*

Seniority the paramount factor in determining lay-offs per collective agreement — grievance allowed. *Re Thames Valley Ambulance Limited and London Ambulance Attendants' Association; Herkenburg grievance*, September 11, 1980. Brandt, Ronski — 14 pages; dissent: Billings — 2 pages. (63)

**Overtime**

Distribution — collective agreement requiring equitable distribution over year, not each week; grievance dismissed. *Re Union Carbide Canada Limited and Oil, Chemical and Atomic Workers International Union, Local 9-593; Patchett grievance*, July 29, 1980. Rayner, Edwards, Roberts — 8 pages. (64)

Distribution — grievor not shown to be available for overtime work at the relevant time; grievance dismissed. *Re Chromasco Limited and United Steelworkers of America, Local 4632; Sauve grievance*, September 16, 1980. Roach — 7 pages. (65)

Distribution — work to be offered to competent inspectors equally, not most qualified; grievance allowed in part. *Re Fleet Industries, Division of Ronyx Corporation Ltd., and Lodge 171 International Association of Machinists and Aerospace Workers; union grievance*, September 15, 1980. Kennedy — 13 pages. (66)

Shift change — change not avoiding proper payment of overtime; grievance dismissed. *Re Her Majesty the Queen in Right of the Province of Ontario and Ontario Provincial Police Association of Ontario; Berecz grievance*, September 4, 1980. Majority: Carter, Hubert — 9 pages; dissent: Scott — 3 pages. (67)

Work performed prior to regular start of shift found to be regular time — only work in excess of eight hours paid as overtime; grievance dismissed. *Re Dominion Bridge Company Limited and United Steelworkers of America, Local 3390; Mangion grievance*. See (54), *supra*. (68)

**Premium Pay**

Work performed on holiday alleged — collective agreement moving statutory holiday where it coincides with rest day; only entitled to premium for work on rest day; grievance dismissed. *Re Her Majesty the Queen in Right of the Province of Ontario and Ontario Provincial Police Association of Ontario; Stafford grievance*. See (67), *supra*. (69)

**Procedure**

Lack of particulars alleged — board to determine real matter in dispute and allow necessary amendments; grievance amended. *Re Valley East, Corporation of the Town of, and Canadian Union of Public Employees, Local 6; Houle grievance*, September 16, 1980. Majority: Kennedy, McVey — 12 pages; dissent: Valin — 2 pages. (70)\*

**Promotion**

Familiarization period — grievor failing to take advantage of training opportunities: subsequent demotion justified; grievance dismissed. *Re Electrohome Limited and International Brotherhood of Electrical Workers, Local 2345; Delaney grievance*, August 27, 1980. O'Shea, Fisher, Boehmer — 19 pages; addendum: Fisher — 1 page. (71)

Onus of establishing relative qualifications — onus shifting to employer; board reserving jurisdiction to deal with remedy. *Re Valley East, Corporation of the Town of, and Canadian Union of Public Employees, Local 6; Houle grievance*. See (70), *supra*. (72)\*

Qualifications — company not required to train grievor; grievance dismissed. *Re E.B. Eddy Forest Products Limited and Office and Professional Employees International Union, Local 421; Maahs grievance*, September 3, 1980. Majority: Adams, McNaughton — 14 pages; dissent: McVey. (73)

Qualifications — employer acting fairly, reasonably and without discrimination; grievance dismissed. *Re Sudbury and Algoma Sanatorium Association, Board of Directors of, and Canadian Union of Public Employees, Local 1023; Walker grievance*, September 9, 1980. Brunner — 10 pages. (74)

Qualifications — grievor not qualified to perform posted job without training; grievance dismissed. *Re Raybestos-Manhattan (Canada) Limited and United Steelworkers of America, Local 5141; Wharton grievance*, September 23, 1980. Hinnegan — 7 pages. (75)

Qualifications — grievor not sufficiently mature or qualified for position; grievance dismissed. *Re Bonimart Foods, Division of the Oshawa Group Limited, and Retail, Wholesale and Department Store Union, Local 579; Valente grievance*, September 12, 1980. O'Shea — 20 pages. (76)

Qualifications — grievor with seniority possessing substantially same level of skills as promoted employee; grievance allowed. *Re Great Atlantic & Pacific Company of Canada and Canadian Food and Allied Workers Union; Smith grievance*, July 29, 1980. Majority: Rayner, Simon — 11 pages; dissent: Dinsdale — 4 pages. (77)

Qualifications — time spent on temporary assignment cannot be used for purpose of establishing greater qualifications for posted jobs but it may be used in assessing applicant's experience; grievance dismissed. *Re Northern Telecom Limited and United Automobile Workers, Local 1915; Fox grievance*, August 22, 1980. O'Shea — 13 pages. (78)

**Recall**

Extent of recall rights — senior employee entitled to recall over more experienced employee; grievance allowed. *Re Canadian Appliance Manufacturing Company Ltd. and United Steelworkers of America, Local 3129; Young grievance*, September 8, 1980. O'Shea — 15 pages. (79)

**Scheduling of Work**

Change of work schedule — employer acted arbitrarily and for reasons unrelated to efficient operation; grievances allowed. *Re Markham, Corporation of the Town of, and Markham Professional Firefighters Association, Local 2727; employees' and policy grievances*, September 9, 1980. Brent — 19 pages. (80)

Weekend function held on school premises — requirement to retain janitorial staff; grievance allowed. *Re Metropolitan Separate School Board and Canadian Union of Public Employees, Local 1280; Durante and Runca grievance*, August 28, 1980. Majority: Dunn, Griffin — 6 pages; dissent: Filion — 1 page. (81)

**Seniority**

Calculation: sabbatical salary entitlement dependent upon years of service — service outside bargaining unit to be included; grievances allowed. *Re Ryerson Polytechnical Institute, Board of Governors of, and Ryerson Faculty Association; Lauder, Mead grievances*, September 19, 1980. MacDowell — 18 pages. (82)\*

Credit for part-time work — not applying to employees acquiring full-time status before collective agreement coming into effect; grievance dismissed. *Re Kitchens of Sara Lee (Canada) Ltd. and Retail, Wholesale Bakery and Confectionery Workers, Local 461; Aldham grievance*, September 11, 1980. H.D. Brown — 5 pages. (83)

Termination of seniority rights — removal from seniority because of long-term disability improper; grievance allowed. *Re J.H. Normick Inc. (Cochrane Division) and Lumber and Sawmill Workers' Union, Local 2995; Proulx grievance*, September 3, 1980. Majority: Linden, Fyshe — 7 pages; dissent (in part): Valin — 2 pages. (84)

**Service Pay**

Pay for service with other police forces claimed — employer having discretion to award service pay; grievance dismissed. *Re Board of Commissioners of Police for City of Stratford and Stratford Police Association; Brown, Bunting, Hoy grievance*, August 29, 1980. Welling — 12 pages. (85)

**Termination.**

Mental illness — risk of injury to grievor or fellow employees; grievance dismissed. *Re Union Carbide Canada Limited, Metals and Carbon Division, and United Electrical, Radio and Machine Workers of America, Local 523; Oliver grievance*, May 12, 1980. Majority: J.L. Roberts, Orsini — 13 pages; dissent: Bosnich — 2 pages. (86)

**Transfer**

Change of job location — grievor having no rights in particular job; grievance dismissed. *Re Campeau Corporation and Canadian Construction, Building Maintenance and General Workers Union; Manfredi grievance*, August 25, 1980. Willes — 9 pages. (87)†

Remedy where improper transfer — grievor entitled to job, and progression in the job. *Re Mississauga Hydro-Electrical Commission and International Brotherhood of Electrical Workers, Local 636; Ryan grievance*, August 8, 1980. Rayner, Heslinga, Stacey — 7 pages. (88)

Transfer back — entitlement not applying to temporary vacancies; grievance dismissed. *Re Inco Metals Company Limited and United Steelworkers of America, Local 6200; group grievance*, August 20, 1980. Majority: Rayner, Wakely — 10 pages; dissent: Urbanovics — 2 pages. (89)

**Vacations**

Entitlement where seniority credit for part-time employment — anniversary date still referring to commencement of full-time employment; grievances dismissed. *Re Fairhaven Home for Senior Citizens and Canadian Union of Public Employees, Local 131; Power, Martin grievances*, August 29, 1980. Majority: Hinnegan, Metcalfe — 7 pages; dissent: Taylor. (90)

Measurement of service date — last calendar day of previous year rather than effective date of new collective agreement; grievance dismissed. *Re Joy Manufacturing Company (Canada) Ltd. and United Steelworkers of America, Local 2871; union grievance*, September 19, 1980. O'Shea — 15 pages. (91)

**Wages**

Rate protection when transfer to lower-rated job — not applicable to lay-off and recall; grievance dismissed.

*Re Quaker Oats Company of Canada and United Food and Commercial Workers, Local 1172-1; Spencer grievance*, September 15, 1980. Rubenstein — 9 pages. (92)†

**Welfare Plans**

"Date of hire" — considered as the date on which employee is actively engaged in work for which he is paid; grievance dismissed. *Re Plax Canada Limited and United Rubber, Cork, Linoleum and Plastic Workers of America, Local 1043; Brown grievance*, September 12, 1980. O'Shea — 15 pages. (93)

Extent of employer's obligation — no obligation to act as insurer; grievance not arbitrable. *Re Fiberglas Canada Limited and Amalgamated Clothing and Textile Workers' Union; McCreary grievance*. See (19), *supra*. (94)

**Work Assignment**

Supervisor doing unit work — employer unable to establish undue delay in getting unit employee; grievance allowed in part. *Re Air Canada and Canadian Air Line Employees Association; union grievance*, September 3, 1980. H.D. Brown — 16 pages. (95)

The following awards in interest arbitrations under *The Hospital Labour Disputes Arbitration Act* were also filed with the Office of Arbitration during the month of September, 1980.

*Alpha Nursing Home Limited and Service Employees International Union, Local 204*, Davidson, Simon — 14 pages; partial dissent: Graham — 1 page.

*Central Hospital and Ontario Nurses' Association*, Baum — 13 pages; dissent in part: Belford — 8 pages; addendum: Baum — 1 page; opinion to follow: Goudge.

*General Hospital of Port Arthur and Service Employees Union, Local 268 (office and clerical)*, Baum, Anderson, Simon — 9 pages; appendix — 8 pages.

*Halton, Regional Municipality of, (Halton Centennial Manor), and Canadian Union of Operating Engineers and General Workers (full-time)*, Palmer, Harrison — 54 pages; dissent in part: Billings — 2 pages.

*Hamilton-Wentworth, Regional Municipality of, (Wentworth Lodge), and Canadian Union of Public Employees, Local 2176*, H.D. Brown, Stringer, Walsh — 14 pages.

*Hanover and District Hospital and London and District Service Workers' Union, Local 220 (part-time)*, Brunner, Walsh — 9 pages; addendum: Walsh — 2 pages; dissent: Murray — 1 page.

*Peterborough Civic Hospital and Ontario Nurses' Association (full-time and part-time)*, Willes, O'Byrne — 7 pages; dissent: Goudge — 3 pages.

*Queensway General Hospital and Ontario Nurses' Association (full-time and part-time)*, Davidson, Winkler — 13 pages; addendum: Winkler — 1 page; dissent: Goudge — 4 pages.

*Renfrew, Corporation of County of, (Bonnechere Manor), and Canadian Union of Public Employees, Local 1508*, Fraser, Walsh — 18 pages; dissent in part: Black — 2 pages.

*Riverside Hospital, Ottawa, and Canadian Union of Operating Engineers and General Workers (stationary engineers and maintenance)*, Samuels, McManus — 18 pages; concurring with one exception: Stansel.

*Rosebank Convalescent Home and Service Employees Union, Local 204, (part-time)*, Barton, Filion — 7 pages; partial dissent: Simon — 1 page.

*Salvation Army Grace Hospital, Windsor, and Ontario Public Service Employees' Union (medical laboratory technologists, technicians and laboratory assistants)*, Waisglass, Cochrane — 5 pages; dissent: Burnell — 2 pages.

*Sudbury, Regional Municipality of, (Pioneer Home for the Aged), and Ontario Nurses' Association (full-time)*, Brent, Walsh — 20 pages; appendix — 3 pages; addendum: Walsh — 2 pages; dissent: Baldwin — 4 pages.

*Sudbury, Regional Municipality of, (Pioneer Home for the Aged), and Ontario Nurses' Association (part-time)*, Brent, Walsh — 11 pages; appendix — 4 pages; addendum: Walsh — 2 pages; dissent: Baldwin — 1 page.

*Trenton Memorial Hospital and Ontario Nurses' Association (full-time and part-time)*, Kennedy, Drmaj — 26 pages; addendum: Drmaj — 1 page; concurring in part: Goudge.

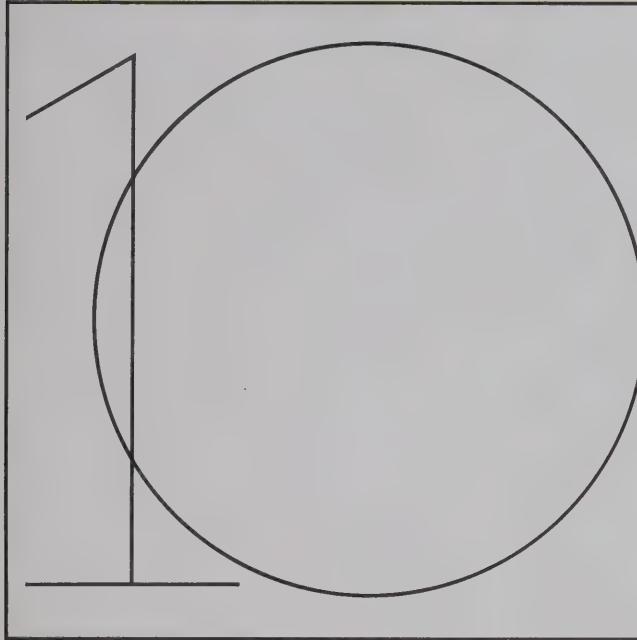
The awards may be seen at the Office of Arbitration, 400 University Avenue, 6th Floor, Toronto. Copies of awards may be obtained for a fee of 50 cents per page. Orders will be filled on receipt of an application and a cheque or money order payable to the Treasurer of Ontario for the applicable amount, which should be forwarded to: Cashier's Office, Ministry of Labour, 400 University Avenue, Toronto, Ontario, M7A 1T7.

#### Filing Awards

The attention of chairmen of boards of arbitration and sole arbitrators is drawn to the regulations under *The Labour Relations Act* which require every arbitrator to file a copy of his award with the Office of Arbitration within ten days of issuing such award.

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# Monthly Bulletin



## Office of Arbitration



Ontario

Miss Jean M. Read, Director.

Ontario Ministry of Labour  
400 University Avenue, 6th Floor  
Toronto, Ontario  
M7A 1T7  
Tel. (416) 965-5669

Hon. Robert Elgie, M.D., Minister  
T.E. Armstrong, QC, Deputy Minister

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Office of Arbitration as a service to  
persons involved in labour-management  
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### Appointment of Arbitrators

Forms for requests for appointment of arbitrator under section 37a of *The Labour Relations Act* are available on request, from the Office of Arbitration.

### Change of Address and Telephone Number

The following change should be noted, effective immediately:

Professor Harry J. Waisglass, 49 Sanders Boulevard,  
Hamilton, Ontario, L8S 3J5; telephone (416) 525-7837 or  
(416) 525-9140, Extension 4692/3.

### Awards

The following awards were filed with the Office of Arbitration during the month of October, 1980.

The summary was prepared at the Faculty of Law, Queen's University, under the supervision of C.G. Simmons, B.A., B.C.L., LL.M.; D.D. Carter, B.A., B.C.L., LL.B. and K.P. Swan, P. Eng., LL.B.

\* Indicates award to be reported in full or in part in *Labour Arbitration Cases*.

† Indicates award issued under section 37a of *The Labour Relations Act*.

### Arbitrability

Matter arising under expired collective agreement — dispute arises from interpretation of collective agreement no longer in force; rights arbitration under s. 37a of *The Labour Relations Act* cannot provide the remedy sought; grievance dismissed. *Re Brown Brothers Limited and Graphic Arts International Union, Local 28-B; policy grievance*, October 17, 1980. P.M. Draper — 9 pages. (1)†

Qualifications for apprenticeship program — nothing in collective agreement speaking to the matter; grievances not arbitrable. *Re Adams Mine and United Steelworkers of America, Local 6409; McDougal, Angus, Burrows and Landers grievances*, September 30, 1980. Hinnegan — 5 pages. (2)

#### Bargaining Unit

Department of employer receiving outside funding — source of funding irrelevant; department employees come within employer-wide bargaining unit; grievance allowed. *Re Ontario Federation of Labour and Office and Professional Employees International Union, Local 343; policy grievance*, October 29, 1980. Burkett — 8 pages. (3)

#### Classification

"Casual" employees — hours worked bring casual workers within "Regular part-time" classification; grievance allowed. *Re University Hospital, London, and London and District Service Workers' Union, Local 220; policy grievance*, August 1, 1980. Weatherill, Switzman, Winkler — 9 pages. (4)

Change in job — additional requirement insufficient to merit increase; grievance dismissed. *Re Dahmer Steel Limited and United Steelworkers of America, Local 7138; Howell grievance*, September 29, 1980. Palmer — 6 pages. (5)

Change in operations — appropriate classification determined by reference to comparable categories for discontinued operations listed in collective agreement; grievance allowed. *Re Toronto Abattoirs Limited and Canadian Food and Allied Workers, Local P743; group grievance*, October 6, 1980. McLaren — 5 pages. (6)

Extra duties assigned — higher rate of pay must be set; grievance allowed. *Re VS Services Limited (Food Management Services) at Queen Elizabeth Hospital and Workers Union of Queen Elizabeth Hospital; Mallory grievance*, October 24, 1980. Burkett — 16 pages. (7)

Higher classification claimed — performance of isolated act not placing grievor in higher classification; grievance dismissed. *Re Inco Metals Company and United Steelworkers of America, Local 6500; Gosselin grievance*, October 7, 1980. Majority: Rayner, Filion — 9 pages; dissent: Signoretti. (8)

#### Contracting Out

Construction of new sidewalks assigned to outside contractor — not work normally performed by members of bargaining unit; grievance dismissed. *Re Windsor Corporation of City of, and Windsor Municipal Employees, Local 82, Canadian Union of Public Employees; Danelon and Crosby grievance*, September 24, 1980. Brunner, Salvador, Desmarais — 6 pages. (9)

Use of hired trucks — company violated agreement notwithstanding economic benefit where own employees available to do work in question; grievance allowed. *Re King Paving Materials and Teamsters, Local 879; group grievance*, October 6, 1980. Majority: Rayner, Hurd — 12 pages; dissent: Cosburn — 3 pages. (10)

#### Cost of Living Allowance

Calculation — collective agreement provides for discreet wage increases for every specified unit of increase in Consumer Price Index; no carry-over of fractions of these units to another month; grievance dismissed. *Re Atlas Steels and Canadian Steelworkers Union, Atlas Division; policy grievance*, October 23, 1980. Majority: Weatherill, Filion — 10 pages; dissent: Simpson — 2 pages. (11)

#### Discharge

Absence due to illness — failure to adequately report to employer: suspension substituted; grievance allowed. *Re Summit Park Lodge and Service Employees Union, Local 204; Murray grievance*, October 10, 1980. Kennedy, Maddison, Stewart — 14 pages. (12)

Absenteeism due to illness — collective agreement precluding dismissal during prescribed interval; grievance allowed.

*Re Weston Bakeries Limited and Retail, Wholesale Bakery and Confectionery Workers' Union, Local 461; Paroski grievance*, October 20, 1980. Hinnegan, McGowan, Spaxman — 5 pages. (13)

Absence for three consecutive working days — not a deemed quit; grievance allowed. *Re Welmet Industries Limited and United Steelworkers of America; McClemont grievance*, October 17, 1980. Rayner — 11 pages. (14)\*

Absence from work area without permission — no prior offences; reinstatement without compensation. *Re Motor Wheel Corporation of Canada Limited and United Automobile Workers, Local 127; Cox, Simpson grievances*, October 3, 1980. Palmer — 12 pages. (15)

Absence without notice — grievor's claims of injury and inability to contact company not credible; grievance dismissed. *Re Canron Inc., Plastics Division, and International Molders and Allied Workers Union, Local 64; Mohammed grievance*, September 30, 1980. Kennedy — 21 pages. (16)

Absenteeism; grievor not at work for four years due to injury — company having proper cause for termination; grievance dismissed. *Re Livingston Industries Limited and International Woodworkers of America; Varga grievance*, October 20, 1980. Majority: Burkett, Wakely — 13 pages; dissent: Marcantonio — 1 page. (17)

Abuse of patient — improper handling of nursing home residents not "abuse"; suspension substituted. *Re Peel Manor — Home for the Aged of Regional Municipality of Peel and Canadian Union of Public Employees, Local 966; Dvoracek grievance*, September 30, 1980. Majority: McLaren, Edwards — 21 pages; dissent: Houck — 4 pages. (18)

Alcoholism — grievor drunk on job, in combination with long and unsuccessful rehabilitation attempt justifying termination; grievance dismissed. *Re Canadian General Electric and United Electrical, Radio and Machine Workers of America, Local 524; O'Brien grievance*, October 2, 1980. Majority: Hinnegan, Bertuzzi — 6 pages; dissent: Russell — 1 page; appendix — 2 pages. (19)

Alcohol related absence – discharge justified but considering alcoholism, conditional reinstatement appropriate. *Re Canadian General Electric and United Electrical, Radio and Machine Workers of America, Local 524; Townsend grievance*, October 2, 1980. Hinnegan, Bertuzzi, Russell – 3 pages; appendix – 5 pages. (20)

Assault – constituting only one incident of drunkenness; suspension substituted. *Re Toronto Harbour Commissioners and International Longshoremen's Association, Locals 1842 and 1869; Hill grievance*, October 15, 1980. Kennedy – 18 pages. (21)

Assault upon foreman – provocation; substitution of one-month suspension. *Re Inglis Limited and United Steelworkers of America, Local 2900; Quann grievance*, October 9, 1980. O'Shea – 16 pages. (22)

Assaulting supervisor and disobeying instructions – grievance dismissed. *Re Swift Canadian Company Limited and Canadian Food and Allied Workers, Local 1105; Hill grievance*, July 31, 1980. Majority: Weatherill, Healy – 10 pages; dissent: Walsh – 1 page. (23)

Culminating incident – grievor's record equivocal; conditional reinstatement, suspension substituted. *Re General Tire and Rubber Company and United Rubber, Cork, Linoleum and Plastics Workers of America, Local 536; Little grievance*, October 27, 1980. Majority: Brent, Collins – 26 pages; dissent: Clawson – 4 pages. (24)

Culminating incident – just cause for discharge in culminating incident and past record; grievance dismissed. *Re Canadian Ohio Brass Company Limited and Teamsters Chemical Energy and Allied Workers, Local 1345; Bernard grievance*, October 20, 1980. O'Shea – 15 pages. (25)

Dishonesty: theft and forgery – substitution of lesser penalty not appropriate; grievance dismissed. *Re Cooper Tool Group Limited and United Steelworkers of America, Local 6709; Voisin grievance*; September 30, 1980. O'Shea – 14 pages. (26)

Falsification of production records alleged – not substantiated; grievance allowed. *Re Massey-Ferguson Industries Limited and United Automobile Workers, Local 458; Cooper grievance*, October 8, 1980. Palmer – 11 pages. (27)

Fighting – grievor's participation less culpable; penalty reduced to two-months suspension. *Re International Parts Manufacturing Limited and United Steelworkers of America, Local 6727; Camara grievance*, October 23, 1980. Majority: Kennedy, Wrightman – 7 pages; dissent: Penny. (28)

Inability to control temper – penalty "not equitable" but good relationship with employer unlikely; compensation without reinstatement. *Re Wardair Canada (1975) Limited and Canadian Air Line Flight Attendants Association; Belitsky grievance*, October 20, 1980. Arthurs – 21 pages. (29)

Insubordination alleged – not established that clear order given; grievance allowed. *Re Hunter Rose Company Limited and Graphic Arts International Union, Local 28-B; Leggett grievance*, October 3, 1980. Majority: McLaren, O'Reilly – 19 pages; dissent: Winning. (30)\*

Insubordination: refusal to perform work – not a quit; no just cause; grievance allowed. *Re Welmet Industries Limited and United Steelworkers of America; McClemon grievance*. See (14), *supra*. (31)\*

Insubordination: threats, lawsuit against employer – constituting ongoing attempt to get monetary award; grievance dismissed. *Re Union of National Defence Employees and Staff Officers Union; Van Wyck grievance*, October 9, 1980. Punnett – 18 pages. (32)

Medical disability – not preventing performance of regular duties; grievance allowed. *Re Metropolitan Toronto, Municipality of, and Metropolitan Toronto Civic Employees Union, Local 43; Hughes grievance*, October 8, 1980. Majority: Kennedy, Tate – 15 pages; dissent: Murray. (33)

Substitution of lesser penalty where participation in illegal strike – conditional reinstatement ordered. *Re Emco Limited and United Steelworkers of America, Local 2699; Thompson grievance*, May 21, 1980. Majority: Palmer, Warrian – 14 pages; dissent: Winkler – 2 pages. (34)

Unavailability for work when required – part-time employee: employer's policy unclear; grievance allowed. *Re Sarnia, Corporation of City of, (Marshall Gowland Manor), and London and District Service Workers' Union, Local 220; Mills grievance*, October 14, 1980. Majority: Barton, Switzman – 10 pages; dissent: Furlong. (35)

### Discipline

Absence from work station for coffee break – interference with performance of work; grievance dismissed. *Re Noranda Metal Industries Limited and International Brotherhood of Electrical Workers; Griffin grievance*, September 5, 1980. Teplitsky, Harris, Knipfel – 5 pages. (36)

Absenteeism – certificate obtained from doctor after return to work, satisfying vague employer directive; grievance allowed. *Re City of Toronto, Corporation of, and Metropolitan Toronto Civic Employees Union, Local 43; Rooney grievance*, September 30, 1980. Majority: Linden, Tate – 9 pages; dissent: Dinsdale – 1 page. (37)

Absenteeism – circumstances requiring grievor to correct situation or provide medical or other information to allow employer to evaluate nature of absences; grievance dismissed. *Re Cambridge, Corporation of City of, and Canadian Union of Public Employees, Local 32; Robinson grievance*, October 8, 1980. Majority: Kennedy, Rogers – 9 pages; dissent: Maddison. (38)

Absenteeism — offence recurring, but with gradually diminishing frequency over a period of years; suspension reduced. *Re Canadian Ohio Brass Company Limited and Teamsters Chemical Energy and Allied Workers, Local 1345; Perry grievance*, September 30, 1980. Weatherill — 6 pages. (39)

Abuse of honour system alleged: claim for early arrival for overtime work and for shift not worked due to illness — no intent to abuse honour system; entitled to pay when ill; grievance allowed. *Re Pioneer Chain Saw Corporation Inc. and United Steelworkers of America, Local 8753; Boyce grievance*, October 28, 1980. Simmons — 9 pages. (40)

Illegal strike — company treating time on strike as a suspension considered just and lenient; grievance dismissed. *Re Long Manufacturing Division, Borg-Warner (Canada) Limited and International Association of Machinists and Aerospace Workers, Local 2330; Gimmer grievance*, September 30, 1980. Majority: Brunner, Boehmer — 5 pages; did not concur: Lewis. (41)

Insubordination: refusal to follow orders — three-day suspension appropriate; grievance dismissed. *Re Thomas Built Buses of Canada Limited and United Automobile Workers, Local 636; Arseneau grievance*, October 3, 1980. Majority: Palmer, Filion — 8 pages; dissent: Blackburn — 2 pages. (42)

Insubordination: refusal to perform work — health and safety concern not established; grievance dismissed. *Re Reed Decorative Products Limited and Canadian Paperworkers Union, Local 304; Hawthorne grievance*, October 15, 1980. Burkett, Easdale, Weisbach — 12 pages. (43)

Just cause standard: just cause to be implied from s. 157 of Canada Labour Code — just cause established; grievance dismissed. *Re National Arts Centre Corporation and Public Service Alliance of Canada; Mulvihill grievance*, October 21, 1980. Weatherill — 11 pages. (44)\*

Notice of discipline — notice to union not notice to employees; grievance allowed in part. *Re Fisher Controls Company of Canada Limited and United Automobile Workers, Local 636; policy grievance*, July 28, 1980. Weatherill, Blackburn, Purdy — 7 pages. (45)

Restricting output — progressive warnings ending in suspension; grievance dismissed. *Re National Steel Car Corporation and United Steelworkers of America, Local 7135; Simmons grievance*, October 15, 1980. Punnett — 7 pages. (46)†

Work performance — fact that production-line employees fell behind not demonstrating culpable conduct; grievance allowed. *Re Elk Lake Planing Mill Limited and Lumber and Sawmill Workers' Union, Local 2295; Lance grievance*, October 2, 1980. Majority: MacDowell, Fyshe — 12 pages; dissent: Young — 2 pages. (47)

Work performance — matter of professional judgement; grievance allowed. *Re Ontario Nurses' Association and Ontario Nurses' Association Staff Union, Unit #1; Moore grievance*, October 6, 1980. Palmer — 13 pages. (48)

Work performance unsatisfactory: evaluation and warning given — grievance dismissed. *Re Perley Hospital and Ontario Nurses' Association; Murphy grievance*, October 20, 1980. Majority: H.D. Brown, Rivet — 22 pages; dissent: Butler. (49)

#### Estoppel

Detriment — employees relied to their detriment on employer's four-year practice of payment for holidays; grievance allowed. *Re Auto Family Credit Union (Niagara) Limited and United Automobile Workers, Local 374; group grievance*, September 22, 1980. McLaren — 15 pages. (50)\*

Settlement varying collective agreement — further grievance dismissed. *Re Leeds and Grenville County Board of Education and Ontario Secondary School Teachers' Federation, Thousand Islands District (#37); staff of Athens District High School grievance*, August 1, 1980. Weatherill — 9 pages. (51)

#### Grievance Procedure

Extension of time limits — no "reasonable grounds" to relax deadline; grievance dismissed. *Re Toronto East General and Orthopaedic Hospital Inc. and Service Employees Union, Local 204; Caukwell grievance*, October 21, 1980. Palmer, Filion, Ortlieb — 9 pages. (52)\*

Partial settlement — arbitration of unsettled issue not reviving settled issue; preliminary objection upheld. *Re Air Canada and Canadian Air Line Employees' Association; union grievance*, August 1, 1980. Weatherill — 10 pages. (53)\*

Waiver — failure to object prior to hearing amounting to waiver; grievance arbitrable. *Re National Steel Car Corporation Limited and United Steelworkers; preliminary objection*, October 7, 1980. Punnett — 5 pages. (54)†

#### Holiday Pay

Leave of absence — provision contemplates active employment relationship; long absence due to illness will not meet eligibility requirements; grievance dismissed. *Re Almatex Limited and Oil, Chemical and Atomic Workers International Union, Local 9-834; policy grievance*, October 2, 1980. Majority: Palmer, O'Byrne — 11 pages; dissent: Ublansky — 3 pages. (55)

Qualifying days — grievor failing to discharge onus of proving fact of illness; grievance dismissed. *Re Ladish Company of Canada Limited and International Association of Machinists and Aerospace Workers; Hubbard grievance*, October 20, 1980. Majority: H.D. Brown, Brady — 9 pages; dissent: Lewis. (56)

Qualifying days — suspension on qualifying day; grievances dismissed. *Re Thomas Built Buses of Canada Limited and United Automobile Workers, Local 636; certain grievances*, July 31, 1980. Majority: Weatherill, Wakely — 11 pages; dissent: Blackburn — 1 page. (57)\*

**Illness**

Fitness to return to work — employer acted reasonably in requesting grievor to submit to medical examination; employer not to blame for delay in examination and subsequent reinstatement; grievance dismissed. *Re Allatt Limited and International Woodworkers of America; Banjavcic grievance*, September 30, 1980. Majority: Brunner, Gordon — 15 pages; dissent: Alper — 1 page. (58)

Fitness to return to work — not possible to find that grievor fit to return; grievance dismissed. *Re Algoma Steel Corporation Limited and United Steelworkers of America, Local 2251; Maione grievance*, October 1, 1980. Majority: Gorsky, Storie — 14 pages; dissent: Schultz. (59)

**Job Evaluation**

Disputed factors — determination of appropriate factors. *Re Algoma Steel Corporation Limited and United Transportation Union, Local 917; union grievances*, October 8, 1980. Majority: O'Shea, Hunt — 49 pages; dissent: Sandie — 10 pages. (60)

Retroactivity for terminated employee — former employees not included in settlement, company policy consistent; grievance dismissed. *Re Gates Rubber of Canada Limited and Local 73, United Rubber, Cork, Linoleum and Plastics Workers of America; St. Clair grievance*, September 29, 1980. Majority: Brent, Storie — 6 pages; dissent: Fettes — 1 page. (61)\*

**Job Posting**

Two seasonal positions combined in one job — proper posting of vacancy; grievance dismissed. *Re Niagara, Regional Municipality of, and Canadian Union of Public Employees, Local 1287; Coleman grievance*, October 29, 1980. Majority: Kennedy, Filion — 12 pages; dissent: Bosnich — 3 pages. (62)

Up-grading — considered as promotion requiring posting; grievance allowed. *Re Emerson Electric Canada and United Electrical, Radio and Machine Workers of America, Local 522; Jocko grievance*, October 8, 1980. O'Connor — 6 pages. (63)\*

**Lay-off**

Bumping rights — exercise of rights to transfer to new position conditional on satisfaction of performance requirements; employer cannot set requirements arbitrarily to defeat rights; new assessment ordered; grievance allowed. *Re Canadian General Electric Company Limited and International Union of Electrical, Radio and Machine Workers; Hill grievance*, October 8, 1980. Majority: MacDowell, Cochrane — 21 pages; dissent: Sargeant — 10 pages; addendum: MacDowell, Cochrane — 5 pages. (64)

Probationary employee retained — collective agreement allowing employer to retain skilled employee without seniority; grievance dismissed. *Re Kirsch of Canada Limited and United Automobile Workers, Local 636; Miller grievance*, September 30, 1980. H.D. Brown — 9 pages. (65)

Qualifications — fact that an employee has fulfilled minimum training period as set out in agreement not conclusive of qualification to perform work; grievance dismissed. *Re Reynolds Aluminum Company of Canada Limited and International Molders and Allied Workers Union, Local 28; Holland grievance*, August 1, 1980. Weatherill — 7 pages. (66)

Qualifications — failure to provide opportunity to demonstrate qualifications; grievance allowed. *Re Consolidated-Bathurst Packaging Limited, Hamilton, Ontario, and International Woodworkers of America, Local 2-69; Tambeau grievance*, October 8, 1980. Majority: Brent, Bekerman — 11 pages; dissent: Earle — 7 pages. (67)

Revision of "lay-off questionnaire for long term lay-off" — revisions considered valid; grievance allowed. *Re Webster Manufacturing (London) Limited and International Molders' and Allied Workers' Union, Local 49; Salvona grievance*, October 3, 1980. Samuels — 12 pages. (68)

**Management Rights**

Imposed leave of absence — employer has onus of proving the need for a forced leave to correct medical problems; grievance dismissed. *Re O & K Orenstein & Koppel Canada Limited and International Association of Machinists and Aerospace Workers, Local 1740; McLaren grievance*, October 29, 1980. Kennedy, Werry, Carter — 16 pages. (69)\*

Rule relating to wearing of jewellery — unreasonable infringement of personal freedom; grievance allowed. *Re Canadian Red Cross Blood Transfusion Service (Toronto Centre) and Ontario Nurses' Association; association grievance*, September 23, 1980. Majority: Brunner, Switzman — 8 pages; dissent: McQuat — 4 pages. (70)

**Overtime**

Distribution — company attempting to apply the equivalent opportunity doctrine, making innocent mistake; grievance dismissed. *Re Dow Chemicals of Canada Limited and Oil, Chemical and Atomic Workers Union, Local 9-672; policy grievance*, October 22, 1980. Majority: Gorsky, Churchill-Smith — 9 pages; dissent: Walsh. (71)

Distribution — inequitable distribution; grievance allowed. *Re DeLaval Turbine Canada Limited and Shopmen's Local 834, International Association of Bridge, Structural and Ornamental Iron Workers; Facchinelli grievance*, September 29, 1980. Teplitsky — 5 pages. (72)

Double time — triggered where employee works four hours beyond regular required hours; grievance allowed. *Re Ottawa Civic Hospital and Ontario Nurses' Association; Cumberbatch grievance*, September 30, 1980. Majority: Kennedy, Done — 13 pages; dissent: Rivet — 1 page. (73)

Entitlement — determined by job classification, not work ability; grievances dismissed. *Re Timmins, Corporation of City of, and Canadian Union of Public Employees, Local 210; Adamson et al grievances*, September 25, 1980. Majority: Kennedy, Noble — 6 pages; dissent: McVey — 1 page. (74)

In-kind remedy — appropriate in circumstances; grievance dismissed. *Re Cabot Carbon of Canada Limited and Oil, Chemical and Atomic Workers International Union, Local 9-14; Meer grievance*, October 7, 1980. Majority: Palmer, McNaughton — 11 pages; dissent: Walsh. (75)\*

#### Pensions

Co-ordination of negotiated and pre-existing employer plan — employees covered by pre-existing plan receive negotiated benefits combined with previous benefits, but not the benefits of both plans; grievance dismissed. *Re Abex Industries Limited and International Chemical Workers Union, Local 175; policy grievance*, September 10, 1980. Majority: Brunner, Pogson — 9 pages; dissent: LeFort. (76)

#### Probationary Employee

Access to grievance procedure — discharge not grievable under collective agreement; grievance not arbitrable. *Re Children's Aid Society of Metropolitan Toronto and Canadian Union of Public Employees, Local 2316; Mitchell grievance*, October 19, 1980. Majority: McLaren, Filion — 23 pages; dissent: White. (77)\*

Termination of probationary teacher contract — failure to comply with statutory procedures and as a consequence entitled to be declared redundant under agreement; grievance allowed. *Re Norfolk Board of Education and Ontario Secondary School Teachers' Federation; Tomory grievance*, September 25, 1980. Majority: Brandt, Posen — 24 pages; dissent: Cook — 3 pages. (78)

#### Procedure

Adjournment — condition relating to costs not appropriate; unconditional adjournment granted. *Re Molson's Brewery (Ontario) Limited and Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers, Local 304; Scarcello grievance*, August 1, 1980. Weatherill — 6 pages. (79)

#### Promotion

Qualifications — future job progression a valid consideration in a job posting; grievance dismissed. *Re Ottawa Civic Hospital, Trustees of, and Canadian Union of Public Employees, Local 576; Bernard grievance*, September 16, 1980. Majority: D.W. Scott, Lapointe — 6 pages; dissent: Parker — 18 pages. (80)

Qualifications — grievor less qualified than successful candidate; grievor's greater seniority considered; grievance dismissed. *Re Domtar Construction Materials and Teamsters Chemical Energy and Allied Workers Union, Local 1216; Dore grievance*, October 21, 1980. Majority: Curtis, Byers — 7 pages; dissent: Sloan — 1 page. (81)

Qualifications — inadequate abilities despite seniority; grievance dismissed. *Re Timmins, Corporation of City of, and Canadian Union of Public Employees, Local 210; Senyuk grievance*, September 25, 1980. Majority: Kennedy, Noble — 8 pages; dissent: McVey — 2 pages. (82)

Scope of arbitral review — seniority only one factor; experience, ability and motivation equally important; grievance dismissed. *Re Crown Cork and Seal Company Limited and United Steelworkers of America, Local 8670; Lauzon grievance*, October 29, 1980. Majority: Kennedy, Adams — 12 pages; dissent: Nicol. (83)

#### Recall

Invalid notice of recall — employee entitled to ignore notice that violates seniority provision of collective agreement; grievor's seniority rights not terminated; grievor cannot be denied position for this reason; reinstatement with partial compensation. *Re Canadian Car Division, Hawker Siddeley Canada Limited, and Office and Professional Employees International Union, Local 81; Sovereign grievance*, October 27, 1980. Brunner — 19 pages. (84)

Qualifications — seniority considered only after other specified abilities of employees are assessed and found to be relatively equal; grievance dismissed. *Re British Leaf Tobacco Company of Canada, Limited, and Canadian Union of Operating Engineers and General Workers; Larouche grievance*, July 21, 1980. Majority: Palmer, Borden — 5 pages; dissent: Scott. (85)

#### Reporting Pay

Suspension imposed at commencement of shift — no entitlement to reporting pay; grievances dismissed. *Re Thomas Built Buses of Canada Limited and United Automobile Workers, Local 636; certain grievances*. See (57), *supra*. (86)\*

#### Scheduling of Work

Unilateral shift changes — collective agreement contemplating this management practice; grievance dismissed. *Re Hamilton-Wentworth, Regional Municipality of, and Civil Employees of International Union of Operating Engineers, Local 772; policy grievance*, July 28, 1980. Weatherill — 10 pages. (87)

Yearly schedule — management attempting to comply with union request for schedule; grievance dismissed. *Re Carling O'Keefe Breweries of Canada Limited and Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers; policy grievance*, October 29, 1980. O'Connor — 5 pages. (88)†

**Seniority**

Loss of seniority due to one-day absence — hospital's approach too mechanical; grievance allowed. *Re Toronto Western Hospital and Canadian Union of Public Employees, Local 1744; Seed grievance*, October 27, 1980. Brent, McGowan, Walsh — 18 pages; addendum: McGowan — 3 pages. (89)

Shift preference on transfer — senior employees cannot bump junior employees off preferred shift on transfer; grievance dismissed. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 414; Dimarco, Poskus, Catney grievance*, October 6, 1980.

Majority: Hinnegan, Sargeant — 10 pages; dissent: Spaxman — 2 pages. (90)

Temporary job vacancy — management may fill vacancy of up to thirty days without regard to seniority; grievances allowed in part. *Re Eastern Steelcasting and United Steelworkers of America, Local 8974; Cowan grievances*, October 21, 1980. Weatherill — 11 pages. (91)

**Sick Pay**

Entitlement during vacation — company limitation when employees receiving vacation pay reasonable; grievance dismissed. *Re Glassgoods Division, Multifoods Limited, and Canadian Food and Allied Workers, Local 1129; policy grievance*, October 20, 1980. Majority: H.D. Brown, Wakely — 9 pages; dissent: Kyle — 1 page. (92)

Medical certificate not provided after two-day absence — legitimate illness established; grievance allowed. *Re Sunnybrook Hospital and Ontario Nurses' Association; Shumski grievance*, September 18, 1980. Kirkwood, Symes, Lanigan — 11 pages. (93)

**Transfer**

Bumping rights claimed — only applicable where lay-off; grievance dismissed. *Re Pioneer Chain Saw Corporation Inc. and United Steelworkers of America, Local 8753; Monks grievance*, October 10, 1980. Majority: Kennedy, Hassell — 12 pages; dissent: Jones. (94)

Involuntary transfer from redundant position — seniority not relevant; grievance dismissed. *Re Board of Education for Borough of Scarborough and Ontario Secondary School Teachers' Federation, District 16; Johnson grievance*, July 31, 1980. Majority: Weatherill, Filion — 8 pages; dissent: Goudge — 2 pages. (95)

Part-time employees temporarily assigned to full-time positions — higher rate not payable; grievance dismissed. *Re Peterborough Civic Hospital and Canadian Union of Public Employees, Local 19; group grievance*, October 6, 1980. Prichard, Lewis, O'Connor — 14 pages. (96)

Temporary transfer to classification with higher rate — grievor performing work in new position only a few days a week — grievor to be paid according to classification, not work performed; grievance allowed. *Re Canadian Canners Limited and United Food and Commercial Workers International Union, Local 403; Person grievance*, July 31, 1980. Majority: Weatherill, Dayman — 13 pages; dissent: Wright — 3 pages. (97)

**Union Security**

Dues deduction a condition of employment; refusal of company to require employees to sign authorization — signing authorization not a condition of employment but union dues must be paid; employees not entitled to be heard; grievance allowed. *Re Milltronics Limited and United Electrical, Radio and Machine Workers of America, Local 567; union grievance*, September 29, 1980. P.M. Draper, Smith, Russell — 17 pages. (98)\*

**Vacation**

Practice of permitting employees to work while on vacation — no obligation on employer to require vacation; grievance dismissed. *Re Ivaco Rolling Mills, Division of Industrial Fasteners Limited, L'Original, Ontario, and United Steelworkers of America, Local 7940; policy grievance*, October 17, 1980. Abbott — 12 pages. (99)

**Wages**

Calculation of retroactive pay — no violation of collective agreement; grievance dismissed. *Re Windsor Utilities Commission and International Brotherhood of Electrical Workers, Local 636; union grievance*, October 7, 1980. Majority: Rayner, Burnell — 9 pages; dissent: Brown — 4 pages. (100)

Incentive rates altered — no change in methods and materials; grievance allowed. *Re Waterloo Metal Stampings Limited and United Steelworkers of America, Local 7155; union grievance*, September 3, 1980. Rayner — 5 pages. (101)

Merit increases — failure of employer to review and advise grievor on quality and quantity of work a denial of opportunity for increases from starting rate to job rate within classification; grievance allowed. *Re Canadian General Electric Company Limited and United Electrical, Radio and Machine Workers of America; Chandy grievance*, August 21, 1980. Majority: Ellis, Russell — 14 pages; dissent: Bertuzzi — 3 pages. (102)

Piece-work rate — distribution among groups of employees determined; grievance allowed. *Re Reliable Fur Dressers and Dyers Limited and United Food and Commercial Workers International Union, Local 68F; union grievance*, September 24, 1980. Kennedy — 14 pages. (103)

Trial period — company not required to pay job posting rate of pay to non-qualified candidates; grievance dismissed. *Re Falconbridge Nickel Mines Limited and Sudbury Mine, Mill and Smelter Workers' Union, Local 598; Tessier grievance*, October 20, 1980. H.D. Brown — 11 pages. (104)

Wage progression — to be determined on basis of time in particular classification and not total employment time; grievance dismissed. *Re Salvation Army Grace Hospital and Service Employees Union, Local 210; policy grievance*, October 20, 1980. Majority: H.D. Brown, Burnell — 7 pages; dissent: K. Brown — 1 page. (105)

**Welfare Plans**

Long term disability — employee on long term disability to receive salary but no other benefits; grievance dismissed.

*Re Canadian Labour Congress and Office and Professional Employees International Union, Local 225; Kelly grievance, October 28, 1980. Curtis — 6 pages. (106)*

Unilateral discontinuance of payments to Quebec employees in lieu of employer payment of OHIP premiums of Ontario employees — discontinuance violates maintenance of standards provision in collective agreement; grievances allowed. *Re Brazeau Transport Limited and Teamsters Union, Local 91; employee grievances, September 2, 1980. Majority: Simmons, Shelkie — 10 pages; dissent: Simpson — 4 pages. (107)*

**Work Assignment**

Long-standing work assignment challenged — grievance dismissed. *Re Borough of York and Canadian Union of Public Employees, Local 840; Spottiswood and Goodwin grievance, October 10, 1980. Barton — 9 pages. (108)†*

Reduction in manning due to installation of new equipment — reduction appropriate; grievance dismissed. *Re Photo Engravers and Electrotypes Limited and Toronto Printing Pressmen and Assistants Union No. 10; union grievance, October 6, 1980. Majority: Brandt, Dinsdale — 41 pages; dissent: Licastro — 5 pages. (109)*

The following awards in interest arbitrations under *The Hospital Labour Disputes Arbitration Act* were also filed with the Office of Arbitration during the month of October, 1980.

*Barnes Rest Home (Dresden Residence, a Division of 409411 Ontario Limited) and Service Employees' Union, Local 210 (final award), Barton — 14 pages; appendix — 20 pages; partial dissent: Bartlet — 3 pages; dissent: Lewis — 2 pages.*

*Hillcrest Hospital and Ontario Nurses' Association, Linden, Belford, Goudge — 13 pages.*

*North York General Hospital and Ontario Nurses' Association (full-time and part-time) (supplementary award), Brent, Walsh — 4 pages; dissent: Belford — 1 page; addendum: Brent — 1 page.*

*Peel, Regional Municipality of, (Peel Manor Home for the Aged and Sheridan Villa Home for the Aged), and Ontario Nurses' Association (full-time and part-time), Betcherman, Walsh — 18 pages; partial dissent: Filion.*

*St. Lawrence Estate Nursing Home and Canadian Union of Public Employees, Local 1919 (supplement to award), Ord, Wilson, Walsh — 3 pages.*

*Shaver Hospital for Chest Diseases and Ontario Nurses' Association, Brent, Goudge — 4 pages; dissent: Laing — 2 pages.*

*Tillsonburg District Memorial Hospital and London and District Service Workers' Union, Local 220, (part-time), Brent, Noble, Walsh — 6 pages.*

*Toronto Hospitals (Baycrest Hospital and/or Jewish Home for the Aged, Mount Sinai Hospital, Sunnybrook Hospital, Toronto East General and Orthopaedic Hospital, Inc., and Wellesley Hospital) and Service Employees International Union, Local 204 (central issues) Kruger — 10 pages; partial dissent: Wright — 1 page; partial dissent: Lewis — 4 pages.*

*Waterloo, Regional Municipality of, (Sunnyside Home), and London and District Service Workers' Union, Local 220, (part-time), Linden, Boehmer, Walsh — 2 pages; memorandum of settlement — 4 pages.*

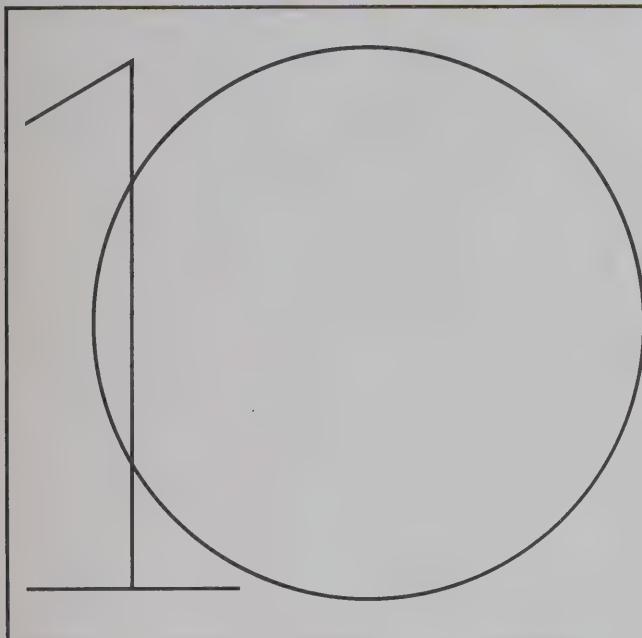
The awards may be seen at the Office of Arbitration, 400 University Avenue, 6th Floor, Toronto. Copies of awards may be obtained for a fee of 50 cents per page. Orders will be filled on receipt of an application and a cheque or money order payable to the Treasurer of Ontario for the applicable amount, which should be forwarded to: Cashier's Office, Ministry of Labour, 400 University Avenue, Toronto, Ontario, M7A 1T7.

**Filing Awards**

The attention of chairmen of boards of arbitration and sole arbitrators is drawn to the regulations under *The Labour Relations Act* which require every arbitrator to file a copy of his award with the Office of Arbitration within ten days of issuing such award.

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# Monthly Bulletin



## Office of Arbitration



Miss Jean M. Read, Director.

Ontario Ministry of Labour  
400 University Avenue, 6th Floor  
Toronto, Ontario  
M7A 1T7  
Tel. (416) 965-5669

Hon. Robert Elgie, M.D., Minister  
T.E. Armstrong, QC, Deputy Minister

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persons involved in labour-management  
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### Appointment of Arbitrators

Forms for requests for appointment of arbitrator under section 37a of *The Labour Relations Act* are available on request, from the Office of Arbitration.

### Change of Telephone Number

The following change should be noted, effective immediately:

Professor D. Fraser: telephone (613) 231-7540.

### Awards

The following awards were filed with the Office of Arbitration during the month of November, 1980.

The summary was prepared at the Faculty of Law, Queen's University, under the supervision of C. G. Simmons, B.A., B.C.L., LL.M.; D. D. Carter, B.A., B.C.L., LL.B. and K. P. Swan, P. Eng., LL.B.

\* Indicates award to be reported in full or in part in *Labour Arbitration Cases*.

† Indicates award issued under section 37a of *The Labour Relations Act*.

### Arbitrability

Grievance relating to expired agreements — board not having jurisdiction; objection allowed. *Re Goodyear Canada Inc. and United Rubberworkers, Local 232; union grievance*, November 12, 1980. M. Picher, Filion, Tate — 18 pages. (1)\*

### Classification

Extra duties alleged — evidence indicates grievor did not perform extra duties; grievance dismissed. *Re Canadian General Electric Company Limited and United Electrical, Radio and Machine Workers of America, Local 524; Todd grievance*, November 14, 1980. Dunn, O'Toole, Russell — 7 pages; addendum: Russell — 1 page. (2)

New positions — functions meriting marginally higher salary than for existing classification; grievance allowed. *Re Windsor, Corporation of City of, (Huron Lodge) and Ontario Nurses' Association; union grievance*, September 26, 1980. Majority: Brunner, Switzman — 8 pages; dissent: Kavanaugh — 4 pages. (3)

Re-hiring as casual employee — not an improper classification; grievance dismissed. *Re Temiskaming Hospital and Canadian Union of Public Employees, Local 904; Lescom grievance*, September 10, 1980. Brunner, Buckland, Belanger — 6 pages. (4)

#### **Collective Agreement**

Membership in pension plan made condition of employment — employer not permitted to enter into individual contracts outside collective agreement; grievance allowed. *Re Consolidated-Bathurst Packaging Limited (Hamilton Plant) and International Woodworkers of America, Local 6-29; policy grievance*, October 27, 1980. Majority: Brunner — 26 pages, Rogers — 1 page; dissent: Alper — 2 pages. (5)\*

#### **Cost of Living Allowance**

Calculation — employer not using the base for calculation provided for in collective agreement; grievances allowed. *Re Canadian Appliance Manufacturing Company Limited and United Steelworkers of America; policy grievances*, November 10, 1980. O'Shea — 16 pages. (6)

#### **Damages**

Mitigation — extra effort to mitigate to be recognized in damage award. *Re Calvert of Canada Limited and United Automobile Workers, Local 2098; Marshall grievance*, October 30, 1980. Rayner — 6 pages. (7)\*

#### **Discharge**

Absence due to injury — grievor advised by doctor to return to work; continued absence resulted in termination under collective agreement; grievance dismissed. *Re Atlas Steels and Canadian Steelworkers' Union, Atlas Division; Brettell grievance*, November 6, 1980. Majority: Kennedy, Baldwin — 14 pages; dissent: Simpson — 5 pages. (8)

Absence from work — culminating incident in a poor employment record; grievance dismissed. *Re Canron Inc. and United Steelworkers of America, Local 2940; Bristol grievance*, November 20, 1980. O'Shea — 14 pages. (9)

Absence without notice — reporting rule for illness imprecise; some effort to report by grievor; reinstatement without compensation. *Re VS Services (Food Management Services) at the Queen Elizabeth Hospital and Workers Union of Queen Elizabeth Hospital; Botelho grievance*, November 19, 1980. O'Shea — 12 pages. (10)

Absenteeism — excessive innocent absenteeism: future inability to attend not shown; conditional reinstatement with compensation; grievance allowed. *Re Steel Company of Canada Limited and United Steelworkers of America, Local 1005; Osborne grievance*, October 29, 1980. Majority: Rayner, Marshall — 11 pages; dissent: Wickie — 1 page. (11)

Absenteeism for minor matters excessive — written warnings; record deteriorated; grievance dismissed. *Re Rockwell International of Canada Limited and International Molders' and Allied Workers' Union, Local 92; Landry grievance*, October 29, 1980. Teplitsky — 8 pages. (12)

Assault on customer — higher standard of conduct required where employee works with public: fight with customer differs from fight among employees; grievance dismissed. *Re Toronto Transit Commission and Amalgamated Transit Union, Local 113; Gross grievance*, November 13, 1980. Majority: McLaren, Filion — 33 pages; dissent: Bosnich — 1 page. (13)\*

Assault on foreman; abusive conduct; grievance dismissed. *Re Coca-Cola Limited and Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers, Local 385-3; Stennett grievance*, November 18, 1980. Curtis — 7 pages. (14)

Breach of trust — grievor's activities tantamount to attempted theft; no mitigating factors; grievance dismissed. *Re General Bakeries Limited, Cambridge, and Retail, Wholesale, Bakery and Confectionery Workers Union, Local 461; Kitchen grievance*, November 14, 1980. H. D. Brown, Spaxman, McGowan — 9 pages. (15)

Conviction for Criminal Code driving offences — just cause for dismissal of bus driver; grievance dismissed. *Re Hamilton Street Railway Company and Amalgamated Transit Union, Local 107; McLaren grievance*, October 30, 1980. Majority: Hinnegan, Bertuzzi — 11 pages; dissent: Bosnich — 1 page. (16)

Criminal conviction — offered rehiring prevented by further jail term: evidence of rehabilitation; good work record, seniority; reinstatement with seniority but without compensation; grievance allowed. *Re Steel Company of Canada Limited, Hilton Works, and United Steelworkers of America, Local 1005; Donaldson grievance*, November 13, 1980. Majority: Kennedy, Bosnich — 17 pages; dissent: Storie — 4 pages. (17)\*

Culminating incident; chain of behaviour resulting from violent temper — dismissal lessened to three-months unpaid suspension. *Re Quaker Oats Company of Canada and United Food and Commercial Workers, Local 1172-1; Caume grievance*, November 12, 1980. Willes — 6 pages. (18)†

Culminating incident — incident not established; grievance allowed. *Re Holland Hitch of Canada Limited and United Automobile Workers, Local 636; MacDonald grievance*, November 13, 1980. Palmer — 8 pages. (19)

Culminating incident — prior record justifying discharge; grievance dismissed. *Re Woodbridge Foam Corporation and Textile Workers' Union; Torok grievance*, November 18, 1980. McCulloch, Churchill-Smith, Hainsworth — 21 pages. (20)

Dishonesty — falsifying time records; poor record; grievance dismissed. *Re Stelco Inc., Hilton Works, and United Steelworkers of America, Local 1005; Kovacs grievance*, October 27, 1980. Majority: Delisle, Murray — 7 pages; dissent: Marshall. (21)

Failure to co-operate in investigation of theft not sufficiently established by employer; grievance allowed. *Re Galt-British Forge Company and United Steelworkers of America, Local 8818; Gergely grievance*, November 5, 1980. Brandt, White, Brooks — 12 pages. (22)

Failure to notify of absence in excess of seven consecutive days — loss of seniority — not just cause; grievance allowed. *Re Firestone Canada Limited (Hamilton Plant) and Local 113, United Rubber, Cork, Linoleum and Plastic Workers of America; Wynen grievance*, September 23, 1980.

Brunner — 15 pages; dissent: Furlong — 1 page; partial dissent to follow: Switzman. (23)\*

Inability due to stress — grievor's length of service and non-culpability making discharge inappropriate; grievance allowed, lay-off substituted. *Re Durham Board of Education and Canadian Union of Public Employees, Local 218; Holt grievance*, November 14, 1980. Kennedy, Lewis, Farrar — 15 pages. (24)

Insubordination; abusive conduct — no mitigating factors; grievance dismissed. *Re Goodyear Canada Inc. and United Rubber, Cork, Linoleum and Plastic Workers of America, Local 232; Samra grievance*, November 19, 1980. Kennedy — 17 pages. (25)

Insubordination: refusal to perform work assignment — culminating incident; grievance dismissed. *Re Motor Wheel Corporation of Canada Limited and United Automobile Workers, Local 127; Titus grievance*, November 3, 1980. Rayner — 11 pages. (26)

Insubordination resulting in suspension and then discharge — reduced to three-day suspension; grievance allowed. *Re General Freight Division of Alltrans Express Limited and Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 938; St. Onge grievance*, October 9, 1980. Majority: Ellis, Petryshen — 20 pages; dissent: Smith — 3 pages. (27)

Marijuana use; grievor present while another employee smoking — discharge of probationary employee appropriate; grievance dismissed. *Re Algoma Steel Corporation Limited and United Steelworkers of America, Local 2251; St. Denis grievance*, November 13, 1980. Majority: Palmer, Morley — 13 pages; dissent: Gurevitch. (28)

Misrepresentation of illness alleged — no evidence of misrepresentation in order to prolong absence or obtain benefits; grievance allowed. *Re Quaker Oats Company of Canada and Canadian Food and Allied Workers, Local P1172; Foreman grievance*, November 5, 1980. Majority: H. D. Brown, Clark — 15 pages; dissent: Brady — 5 pages. (29)

Personality conflict — employer to pay damages; complaint allowed. *Re Worldways Airlines Limited and Janet Wesley; complaint under s. 61.5(b) of Part III of Canada Labour Code*, October 30, 1980. Teplitsky — 7 pages. (30)

Theft — grievor taking employer's merchandise for fraudulently reduced cost; grievance dismissed. *Re Dominion Stores and Retail, Wholesale and Department Store Union, Local 414; Vincent grievance*, September 26, 1980. Majority: J. L. Roberts, White — 18 pages; dissent: Weatherdon — 3 pages. (31)

Theft of beer cases admitted — twenty-eight years of service — suspension substituted for discharge. *Re Brewers Warehousing Company Limited and United Brewers Warehousing Workers' Provincial Board; Ladell grievance*, September 18, 1980. Curtis — 9 pages. (32)

Theft of employer's property — employer unable to substantiate charge; grievor's actions were violation of employer's policy; suspension substituted. *Re Dominion Stores and Retail, Wholesale and Department Store Union, Local 414; Kirk grievance*, September 19, 1980. J. L. Roberts, White, Weatherdon — 17 pages. (33)

Unauthorized absence from work in excess of five days — loss in seniority; irresponsibility in not contacting employer when needed; grievance dismissed. *Re Madonna Nursing Home and Canadian Union of Public Employees, Local 2199; MacCaulay grievance*, September 16, 1980. Majority: D. W. Scott, Kelley — 6 pages; addendum: 1 page; dissent: Kearney — 1 page. (34)

Work performance unsatisfactory — conditional reinstatement without compensation. *Re Algoma Steelworkers Credit Union Limited and United Steelworkers of America, Local 7129; Saccorotti grievance*, September 29, 1980. Hinnegan, Forbes, Gurevitch — 12 pages. (35)

#### Discipline

Absence from work — "personal reasons" not explained to employer: attempt to change reason; record of absenteeism; grievance dismissed. *Re Steel Company of Canada, Hilton Works, and United Steelworkers of America, Local 1005; Chernesky grievance*, November 10, 1980. Majority: Brent, Murray — 11 pages; dissent: Bard. (36)

Absence from work station without permission — discipline warranted; grievance dismissed. *Re Kaiser Aluminum and Chemical of Canada Limited and United Steelworkers of America, Local 4885; McCarthy grievance*, November 21, 1980. Majority: McLaren, Baldwin — 11 pages; dissent: Martin — 3 pages. (37)

Absence without notice established; negligence and loafing on job not established — grievance allowed in part. *Re Fleet Industries, Division of Ronyx Corporation Limited, and Frontier Lodge 1717, International Association of Machinists and Aerospace Workers; Cangianello grievance*, November 19, 1980. Brunner — 10 pages. (38)

Absent from work without permission — employee not informed of suspension; suspension reduced. *Re Photo Engravers and Electrotypes Limited and Graphic Arts International Union, Local 28B; Francis grievance*, November, 1980. McLaren, O'Reilly, Winning — 22 pages. (39)

Extra vacation taken without permission — similar cases to be treated in a consistent manner; one-week suspension reduced to two days. *Re Neptune Meters Limited and United Steelworkers of America, Local 3813; Lozinski grievance*, November 24, 1980. Gorsky — 12 pages. (40)

Failure to report for work on two separate days — three-day suspension appropriate; grievance dismissed. *Re Canada Building Material Company and Teamsters, Chauffeurs, Warehousemen and Helpers Union, Local 880; Boucher grievance*, October 27, 1980. Majority: Stewart, Burnell — 9 pages; dissent: Kobrynn. (41)

Fighting — onus on employer to investigate incident fully; grievance allowed. *Re Dominion Chain Company and International Association of Machinists and Aerospace Workers, Local 1927; Purcell grievance*, October 23, 1980. Majority: Kennedy, Lewis — 10 pages; dissent: Beresford — 3 pages. (42)

General just cause provision absent — discipline solely in employer; Board lacks jurisdiction for grievance of discipline; grievance not arbitrable. *Re Consolidated-Bathurst Packaging Limited and International Woodworkers of America; Bossence grievance*, October 31, 1980. Majority: P. Picher, Rogers — 19 pages; dissent: Millard — 6 pages. (43)

Illegal parking — grievor must accept responsibility for breach of parking rules; employer did not consistently enforce those rules; warning substituted. *Re Canadian Chromalox Company Limited and United Automobile Workers of America; Newman grievance*, November 3, 1980. O'Shea — 7 pages. (44)

Insubordination and failure to do a job — unfamiliar with emergency task; disciplinary note removed from record, no compensation for time lost. *Re Union Carbide Canada Limited and United Electrical, Radio and Machine Workers of America, Local 523; Paille grievance*, November 24, 1980. Brent, Orsini, Bosnich — 6 pages. (45)

Negligence — established by investigation: discipline reasonable; grievance dismissed. *Re Steel Company of Canada Limited, Hilton Works, and United Steelworkers of America, Local 1005; French grievance*, November 7, 1980. Majority: Kennedy, Beresford — 9 pages; dissent: Elder — 2 pages. (46)

Negligent attitude and failure to adequately advise of absence justifying warning notice — grievance dismissed. *Re Keeprite Incorporated and Keeprite Workers Independent Union; Stauffer grievance*, October 31, 1980. O'Shea — 14 pages. (47)

Refusal to work because of apprehended danger — apprehension not reasonable; grievances dismissed. *Re Abitibi Paper Company Limited (White River Woods Division) and Lumber and Sawmill Workers Union, Local 2693; twelve grievances*, November 3, 1980. Majority: Brunner, Ronson — 23 pages; dissent: Bosnich — 5 pages. (48)

Responsibility for cash shortage — obligation established by collective agreement if not disciplinary; grievance dismissed. *Re Ontario Jockey Club and Mutual Employees Association, Local 528, Service Employees International Union; Nodello grievance*, November 14, 1980. Majority: Burkett, Dunsmore — 16 pages; dissent: Nelson — 2 pages. (49)

Suspension substituted after alleged quit — employer liable except for justifiable suspension period; grievance allowed in part. *Re Pine Crest Foods Limited (Chatham), Division of Maple Leaf Mills Limited, and Ontario Poultry, Dairy and Allied Workers' Council; Day grievance*, November 4, 1980. Majority: R. J. Roberts, Walsh — 12 pages; dissent: Wallace. (50)

Unauthorized absence from work — medical certificate not produced — one-day suspension justified; grievance dismissed. *Re Coca-Cola Limited and Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers; Stennett grievance*, October 9, 1980. Curtis — 9 pages. (51)

Unauthorized absence from work — permission not established; grievance dismissed. *Re Canada Packers Limited and United Food and Commercial Workers International Union, Local P-114; Weidenhoeft grievance*, November 24, 1980. Majority: Brandt, Williamson — 13 pages; dissent: Lewis — 2 pages. (52)

Work performance unsatisfactory — written reprimand appropriate but no just cause for one-day suspension. *Re Brewers Warehousing Company Limited and United Brewers Warehousing Workers' Provincial Board; Steele grievance*, October 31, 1980. H. D. Brown — 17 pages. (53)

### **Education Leave**

Absence for Ministry of Health exam — statutory requirement deemed to be in parties' minds and thus "required" by employer; grievance allowed. *Re Hotel Dieu Hospital and Canadian Union of Public Employees, Local 1097; Panczuk grievance*, November 12, 1980. Majority: Kennedy, Bosnich — 7 pages; dissent: Dixon — 1 page. (54)

### **Estoppel**

Representations as to payment of overtime — no agreement as to rate of pay: grievance cannot be founded on estoppel, "a shield, not a sword"; grievance dismissed. *Re General Tire and Rubber Company and United Rubber, Cork, Lineoleum and Plastic Workers of America, Local 536; group grievance*, November 24, 1980. Majority: Brandt, Dinsdale — 18 pages; dissent: Collins. (55)

### **Evidence**

Admissibility — prior incident not resulting in discipline: admissible as evidence of character and as evidence that grievor put on notice. *Re Toronto Transit Commission and Amalgamated Transit Union, Local 113; Gross grievance*. See (13), *supra*. (56)\*

### **Grievance Procedure**

Meeting, called for in grievance procedure, had not been held — grievance not arbitrable. *Re Canadian Heat Treaters Limited and United Steelworkers of America, Local 7024; Stickwood grievance*, November 7, 1980. Welling, Martin, O'Neill — 7 pages. (57)

Policy grievance relating to discharge — policy grievance appropriate unless specifically limited in agreement; grievance arbitrable. *Re Borough of Etobicoke, Corporation of, and Borough of Etobicoke Civic Employees Local Union 185; Spadafora grievance*, November 17, 1980. Majority: Shime, Lewis — 22 pages; dissent: McNaughton — 3 pages. (58)\*

Timeliness — delay not reasonable and employer prejudiced by it; objection allowed. *Re Evenflo, Division of Questor Commercial Inc., and International Woodworkers of America; Horning grievance*, November 13, 1980. Majority: Simmons, Bowman — 11 pages; abstention: Millard. (59)

Timeliness — grievance is continuing and repeated; objection dismissed. *Re Essex, Corporation of County of, and Ontario Nurses' Association; Ferguson et al grievance*, November 12, 1980. Brent, Thrasher, Symes — 13 pages. (60)

#### Holiday Pay

Lay-off — revocation of recall not in time; grievor entitled to holiday pay. *Re Standard Tube Canada Limited and United Automobile Workers, Local 1965; Stephens grievance*, November 19, 1980. O'Connor — 5 pages. (61)

Qualifying day — absent without leave; grievance dismissed. *Re Standard Tube Canada Limited and United Automobile Workers, Local 636; Cooper grievance*, November 3, 1980. R. J. Roberts — 5 pages. (62)

Qualifying day; grievor leaving shift early because of bomb threat — company guaranteed no disciplinary action; grievance allowed. *Re Pullman Trailmobile Canada Limited and United Automobile Workers, Local 397; Dickens and others grievance*, November 5, 1980. H. D. Brown — 11 pages. (63)

#### Hours of Work

Meal period taken at end of shift — not unexpected overtime; grievance dismissed. *Re Canadian Broadcasting Corporation and National Association of Broadcast Employees and Technicians; Foisy grievance*, November 21, 1980. Adams — 9 pages. (64)

#### Illness

Suspension of grievor as driver because of medical report — suspension premature; grievance allowed. *Re McKinley Transport Limited and Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 880; Hogue grievance*, October 30, 1980. Majority: H. D. Brown, Shelkie — 12 pages; dissent: Garavaglia — 1 page. (65)

#### Interpretation

Mutual mistake — onus on employer to communicate its position; grievance allowed. *Re Brampton Hydro-Electric Commission and International Brotherhood of Electrical Workers, Local 636; Draper grievance*, November 12, 1980. Devlin — 16 pages. (66)\*†

Use of extrinsic evidence — past practice established; grievance dismissed. *Re Avis Transport of Canada Limited, Rent A Car Division, and Retail Clerks Union, Local 206; individual and policy grievance*, November 10, 1980. Lunney — 9 pages; Appendix A — 9 pages. (67)

#### Job Vacancy

Qualification — employer must offer position to employee qualified to train for position before transferring employee from another district to fill position; grievance allowed. *Re Canadian National Telecommunications and Canadian National Telecommunications Division of Canadian Brotherhood of Railway, Transport and General Workers; Hanna grievance*, November 14, 1980. Majority: Burkett, Switzman — 13 pages; dissent: Dinsdale — 6 pages. (68)

#### Lay-off

Bumping right — where "maintenance of practices" clause — operational practice established; grievance allowed. *Re Dominion-Consolidated Truck Lines Limited and Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 141; Smith grievance*, November 10, 1980. Adams, McRae, Fosbery — 13 pages. (69)\*

Non-competitive seniority clause — available work that grievor capable of performing; grievance allowed. *Re Hunter Rose Company Limited and Graphic Arts International Union, Local 28-B; Hebert grievance*, November 18, 1980. Majority: Brandt, Zajac — 18 pages; dissent: Winning — 2 pages. (70)

Qualifications for trial period — threshold capacity established; grievance allowed. *Re Canadian Appliance Manufacturing Company Limited and United Steelworkers of America, Local 3129; King grievance*, November 4, 1980. Baum — 10 pages. (71)

Requirement to negotiate lay-offs; requirement to maintain normal earnings of grievor up to arbitration — employer free to lay-off after failure of negotiations; laid-off employees not entitled to be paid for time spent at grievance and arbitration proceedings. *Re Customs Excise Union and Office and Professional Employees' International Union, Local 225; Henderson, Desjardins and Newman grievances*, August 26, 1980. Curtis — 12 pages. (72)

Shortened work week — all of the work force not affected equally; grievances allowed. *Re Abex Industries Limited and United Steelworkers of America, Local 4927; Jeffrey et al grievances*, November 14, 1980. Hinnegan — 6 pages. (73)

**Overtime**

Calculation — grievor working more than eight hours in twenty-four hour period; grievance allowed. *Re Heckett Division of Harsco Corporation and United Steelworkers of America, Local 7577; Couillard grievance*, November 11, 1980. Rayner — 9 pages. (74)

Consent under *The Employment Standards Act* — overtime provisions in collective agreement constituting consent; grievance dismissed. *Re Algoma Steel Corporation and United Steelworkers of America, Local 2251; Pateman grievance*, November 12, 1980. Hinnegan, Dunsmore, Shultz — 15 pages. (75)\*

Consent under *The Employment Standards Act* — compulsory overtime provisions constituting consent; grievance dismissed. *Re Controls Company Canada Limited and United Steelworkers of America, Local 4990; Turner, Kitchenham, Butt and Groves grievance*, November 4, 1980. Hinnegan — 12 pages. (76)

Distribution — difference in hours between those assigned overtime and grievor were minimal; grievance dismissed. *Re Carling O'Keefe Breweries and Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers; Anthony grievance*, November 11, 1980. O'Connor — 4 pages. (77)†

Distribution — overtime work unlike regular work: only incidental performance of grievor's normal duties; equalization not practicable; grievance dismissed. *Re Westroc Industries Limited and United Cement, Lime and Gypsum Workers International Union, Local 366; Guidoni grievance*, November 11, 1980. O'Shea — 14 pages. (78)

Distribution unequal — difference minimal; grievance dismissed. *Re Carling O'Keefe Breweries of Canada Limited and Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers; Post grievance*, October 31, 1980. O'Connor — 6 pages. (79)†

Distribution — employer not estopped from changing policy so long as distribution equitable; grievance dismissed. *Re Metropolitan Toronto, Municipality of, and Metropolitan Toronto Civic Employees Union, Local 43; Manning grievance*, October 24, 1980. Majority: Saltman, Kenny — 9 pages; dissent: Tate — 4 pages; addendum: Saltman, Kenny — 1 page. (80)

Distribution — not assigned to employees normally performing work; grievance allowed. *Re Abitibi Paper Company Limited and Lumber and Sawmill Workers' Union, Local 2995; Bureau, Lafrenière and Morin grievance*, October 29, 1980. Majority: Springate, Wren — 16 pages; dissent: Ronson — 1 page. (81)

Inconsistency between time entitlement charts — contract language should govern; grievance dismissed. *Re Ontario Hydro and Canadian Union of Public Employees, Ontario Hydro Employees Union, Local 1000; Potvin grievance*, November 20, 1980. Majority: Kennedy, Kenny — 12 pages; dissent: Goudge — 4 pages; addendum: Kennedy — 1 page. (82)

Nature of overtime — overtime compulsory; grievance dismissed. *Re Algoma Steel Corporation Limited and United Steelworkers of America, Local 2251; Marttinen grievance*, November 12, 1980. Hinnegan, Dunsmore, Shultz — 5 pages. (83)

**Pension**

Calculation of "contributory earnings" — holiday pay not to be excluded; grievance allowed. *Re London, Corporation of City of, and London Fire Fighters' Association, Local 142; association grievance*, October 30, 1980. Teplitsky — 11 pages. (84)

**Probationary Employee**

Calculation of probationary period — days of approved leave of absence to be counted; grievance arbitrable. *Re Balmoral Lodge Nursing Home and Service Employees Union, Local 478; Metcalf grievance*, November 17, 1980. Majority: H. D. Brown, Ortlieb — 10 pages; dissent: Mustard — 2 pages. (85)

**Promotion**

Qualifications — abilities relatively equal: grievor's seniority governs; grievance allowed. *Re Federal Bolt and Nut Corporation Limited and United Steelworkers of America, Local 7105; Van Horne grievance*, November 17, 1980. Majority: Shime, Rao — 9 pages; dissent: Healy — 4 pages. (86)

Qualifications — abilities relatively equal: grievor's seniority governing; grievance allowed. *Re Sunbeam Home and London and District Service Workers' Union, Local 220; Heer grievance*, undated. R. J. Roberts, Sanderson, Switzman — 9 pages. (87)

Qualifications — employer lacked confidence in grievor's judgement and maturity; grievance dismissed. *Re Southampton, Corporation of Town of, and Southampton Police Association; Bryce grievance*, October 7, 1980. Saltman — 11 pages. (88)

Qualifications — grievor's not equal; grievance dismissed. *Re Shaw-Almex Industries Limited and United Steelworkers of America, Local 13704; Jacklin grievance*, November 14, 1980. Hinnegan — 6 pages. (89)

Qualifications — grievor's qualifications not equal; grievance dismissed. *Re Quaker Oats Company of Canada Limited and United Food and Commercial Workers Union, Local 293-1; Graham grievance*, November 7, 1980. P. M. Draper — 12 pages. (90)†

Qualifications — no evidence that employer unreasonable; grievance dismissed. *Re Falconbridge Nickel Mines Limited and Sudbury Mine, Mill and Smelter Workers Union, Local 598; Wilson grievance*, October 14, 1980. Majority: Teplitsky, Valin — 7 pages; dissent: Hoffman — 1 page. (91)

**Qualifications** — test used not reasonable because of reliance on subjective assessment; matter remitted back to company for reconsideration. *Re Domtar Inc. and Canadian Chemical Workers' Union, Local 17; Pridmore, Noland and Pattenden grievance*, October 31, 1980. Majority: H. D. Brown, McIlwain — 15 pages; dissent: Byers. (92)\*

Qualifications; employer not properly applying collective agreement — grievor's application ordered reconsidered; grievance allowed. *Re University of Ottawa and Association of Professors of University of Ottawa; McCutcheon grievance*, October 31, 1980. Frankel, Brook, MacPherson — 12 pages. (93)

#### Scheduling of Work

Collective agreement scheduling objectives not met — employer must "endeavour" to comply as required by collective agreement; grievance allowed. *Re La Verendrye General Hospital (Fort Frances) Inc. and Ontario Nurses' Association; association grievance*, November 3, 1980. Lunney, Kingerski, Beaulieu — 22 pages. (94)

#### Seniority

Assignment to special inventory work to be on plant-wide seniority basis; grievor not selected because of disciplinary record — grievance allowed. *Re Canadian Chromalox Company Limited and United Automobile Workers; Silva grievance*, November 3, 1980. O'Shea — 9 pages. (95)

#### Severance Benefits

Continuation of pension contributions of terminated employees for two years — obligation applying to re-hired employees; grievance allowed. *Re Kingston Whig-Standard Company Limited and Kingston Typographical Union, No. 204; policy grievance*, November 4, 1980. P. M. Draper, Carty, Quaife — 8 pages. (96)

#### Severance Pay

Sale of business — no termination of employment; grievances dismissed. *Re Borden Company Limited, Burlington Branch and Niagara Branch, and United Dairy and Bakery Workers Union, Local 422 Retail, Wholesale and Department Store Union, and Retail, Wholesale Dairy Workers Union, Local 440 Retail, Wholesale and Department Store Union; Black and Pucci grievances*, November 12, 1980. Kennedy — 10 pages. (97)\*

#### Sick Pay

Scheduling of vacation during sick benefits period — grievor removed from sick benefits plan for that period; collective agreement requires the use of vacation entitlement; grievance dismissed. *Re Carling O'Keefe Breweries of Canada Limited and Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers; LaFramboise grievance*, November 14, 1980. O'Connor — 5 pages. (98)†

#### Transfer

Movement within classification — not a transfer; grievance dismissed. *Re Black Clawson-Kennedy Limited and Local 2469, United Steelworkers of America; group grievance*, October 30, 1980. Majority: H. D. Brown, Dinsdale — 11 pages; dissent: Pease — 3 pages. (99)

#### Union Rights

Distribution of political pamphlets stopped by employer — declaration that employer violated collective agreement. *Re Air Canada and Canadian Air Line Employees' Association; union grievance*, November 13, 1980. Simmons — 11 pages. (100)

#### Vacations

Entitlement; years of service — collective agreement held to refer to calendar years; grievance dismissed. *Re West Nipissing General Hospital and Ontario Nurses' Association; Masko grievance*, November 7, 1980. Majority: Beatty, Paulin — 8 pages; dissent: Herman — 2 pages. (101)

Scheduling — no violation of grievor's seniority; grievance dismissed. *Re Scarborough General Hospital and Canadian Union of Public Employees, Local 1487; Banks grievance*, October 23, 1980. Saltman — 13 pages. (102)†

Scheduling — time to be granted according to seniority and employee choice, not employer convenience; grievance allowed. *Re Kelsey-Hayes Canada Limited, Eureka Foundry Plant, Woodstock Division, and Local 636, United Automobile Workers; union grievance*, November 12, 1980. H. D. Brown — 8 pages. (103)

#### Vacation Pay

Settlement of vacation pay issue — basis of settlement clarified. *Re Fort Erie, Corporation of Town of, and Canadian Union of Public Employees, Local 714; policy grievance*, November 11, 1980. Kennedy, Bosnich, Yeo — 7 pages. (104)

#### Wages

Allowance in lieu of fringe benefits — not included within "wages"; no retroactivity; grievance dismissed. *Re Chelsey Park Nursing Home (Mississauga) and Rockcliffe Nursing Home, Each a Division of Chelsey Park Corporation, and Ontario Nurses' Association; union grievance*, October 27, 1980. Majority: Gorsky, Wakely — 12 pages; dissent: Switzman. (105)

Effective date of increase — collective agreement unambiguously states anniversary date; grievance allowed. *Re Essex, Corporation of County of, and Ontario Nurses' Association; Ferguson et al grievance*. See (60), *supra*. (106)

Paid lunch hour — no continuous shift and no obligation to provide paid lunch period; grievance dismissed. *Re Neelon Casting Limited and United Steelworkers of America, Local 6363; group grievance*, October 24, 1980. O'Shea — 15 pages. (107)

**Work Assignment**

Bargaining unit work allegedly assigned to employees outside unit — amount of bargaining unit work assigned only a small proportion; grievance dismissed. *Re Chrysler Canada Limited and Canadian Union of Operating Engineers and General Workers, Local 100; group grievance*, November 6, 1980. Brent — 17 pages. (108)

Distribution of loads — letter of agreement giving short haul drivers entitlement to highway pickup; grievances allowed. *Re Midland Superior Express Limited and Teamsters Local Union 938; Attard, Godley and Jarvis grievances*, October 31, 1980. Majority: O'Shea, Petryshen — 19 pages; dissent: Murray — 3 pages. (109)

Full-time position eliminated — new part-time staff hired: no violation of collective agreement; result of altered business operations, not of part-time hiring; grievance dismissed. *Re University of Windsor and Canadian Union of Public Employees, Local 1001; Schoenberger grievance*, November 10, 1980. Gorsky — 8 pages. (110)

Supervisors performing work of bargaining unit members — violation of collective agreement; grievance allowed. *Re Fleet Industries, Division of Ronyx Corporation Limited, and International Association of Machinists and Aerospace Workers, Frontier Lodge 171; union grievance*, November 21, 1980. Dunn, Marchand, Carter — 7 pages. (111)

Work performed at new company location by non-bargaining unit employees — contrary to collective agreement; grievance allowed. *Re The Citizen and Ottawa Mailers Union, Local 60; policy grievance*, November 7, 1980. Majority: Kennedy, Weatherdon — 9 pages; dissent: Dinsdale — 8 pages. (112)

The following awards in interest arbitrations under *The Hospital Labour Disputes Arbitration Act* were also filed with the Office of Arbitration during the month of November, 1980.

*Beechgrove Regional Children's Centre and Ontario Public Service Employees' Union*, Waisglass, Bertuzzi — 3 pages; dissent: Kearney — 2 pages.

*Brantford General Hospital and Ontario Nurses' Association*, Palmer — 18 pages; partial dissent: Goudge — 1 page; partial dissent: Wright — 2 pages.

*Lambton, Corporation of County of, (Twilight Haven Home for the Aged and North Lambton Rest Home) and Ontario Nurses' Association*, H. D. Brown, Vezina — 14 pages; partial dissent: Mayne — 3 pages.

*Leisure World Nursing Homes Limited and Service Employees' Union, Local 204*, H. D. Brown, Farrar, Craven — 2 pages; memorandum of settlement — 4 pages; appendix — 1 page.

*North Centennial Manor and Canadian Union of Public Employees, Local 1214*, Baum, Rukavina, Pharand — 11 pages.

*Prince Edward County Memorial Hospital and Ontario Nurses' Association*, Teplitsky, Dixon, Walsh — 9 pages.

*St. Joseph's Hospital, London, Sisters of St. Joseph of Diocese of London, as owner and operator of, and London and District Service Workers' Union, Local 220, (interim award)*, Baum, Mustard, Switzman — 4 pages.

*St. Joseph's Hospital, London, Sisters of St. Joseph of Diocese of London, as owner and operator of, and London and District Service Workers' Union, Local 220, (final award)*, Baum, Switzman — 22 pages; partial dissent: Mustard — 2 pages; note of clarification: Baum — 1 page; addendum: Switzman — 1 page.

*Toronto East General and Orthopaedic Hospital Incorporated and Service Employees Union, Local 204*, Ord, Singer, Craven — 7 pages; addendum: Craven — 1 page.

*Toronto Hospitals (Baycrest Hospital and/or Jewish Home for the Aged, Mount Sinai Hospital, Sunnybrook Hospital, Toronto East General and Orthopaedic Hospital, Inc., and Wellesley Hospital) and Service Employees International Union, Local 204, (supplementary award)*, Kruger, Lewis — 8 pages; dissent in part: Wright.

*Waterloo, Regional Municipality of, (Sunnyside Home) and Ontario Nurses' Association*, Waisglass, Boehmer, Mayne — 8 pages.

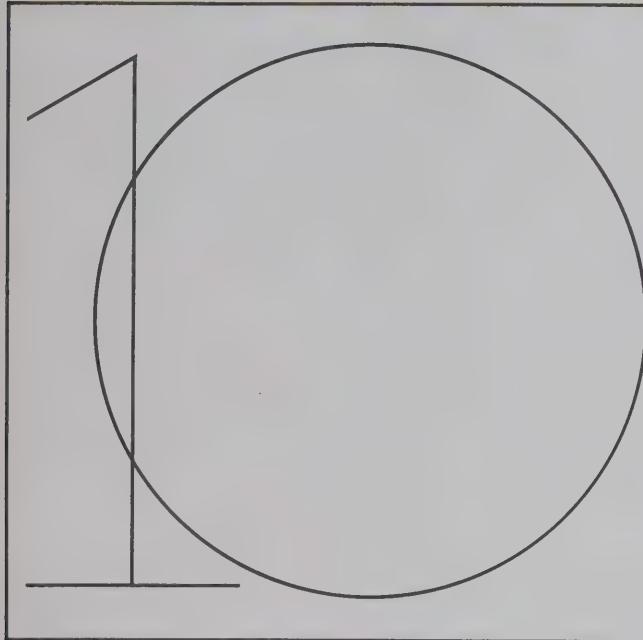
The awards may be seen at the Office of Arbitration, 400 University Avenue, 6th Floor, Toronto. Copies of awards may be obtained for a fee of 50 cents per page. Orders will be filled on receipt of an application and a cheque or money order payable to the Treasurer of Ontario for the applicable amount, which should be forwarded to: Cashier's Office, Ministry of Labour, 400 University Avenue, Toronto, Ontario, M7A 1T7.

**Filing Awards**

The attention of chairmen of boards of arbitration and sole arbitrators is drawn to the regulations under *The Labour Relations Act* which require every arbitrator to file a copy of his award with the Office of Arbitration within ten days of issuing such award.

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# Monthly Bulletin



## Office of Arbitration



Miss Jean M. Read, Director.

Ontario Ministry of Labour  
400 University Avenue, 6th Floor  
Toronto, Ontario  
M7A 1T7  
Tel. (416) 965-5669

Hon. Robert Elgie, M.D., Minister  
T.E. Armstrong, QC, Deputy Minister

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persons involved in labour-management  
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### Appointment of Arbitrators

Forms for requests for appointment of arbitrator under section 37a of *The Labour Relations Act* are available on request, from the Office of Arbitration.

### Awards

The following awards were filed with the Office of Arbitration during the month of December, 1980.

The summary was prepared at the Faculty of Law, Queen's University, under the supervision of C.G. Simmons, B.A., B.C.L., LL.M.; D.D. Carter, B.A., B.C.L., LL.B. and K.P. Swan, P. Eng., LL.B.

\* Indicates award to be reported in full or in part in *Labour Arbitration Cases*.

† Indicates award issued under section 37a of *The Labour Relations Act*.

### Arbitrability

Promotion outside bargaining unit—failure to appoint as supervisor not covered by collective agreement; fairness doctrine does not apply; grievance not arbitrable. *Re Parking Authority of Toronto and Toronto Civic Employees' Local 43, Canadian Union of Public Employees; Lal* grievance, December 18, 1980. Majority: Betcherman, Craig — 11 pages; dissent: Tate — 3 pages; addendum — 3 pages. (1)

Section 37a — section still applicable despite retroactive duration clause. *Re Sarnia, Corporation of City of, (Marshall Gowland Manor) and Ontario Nurses' Association; Matthews grievance*, December 10, 1980. Ianni — 13 pages. (2)\*†

### Bargaining Unit

Federally-funded summer project workers — found to be employees within bargaining unit; grievance allowed; union compensated for dues not checked off. *Re Social Planning Council of Metropolitan Toronto and Canadian Union of Public Employees, Local 1777; union grievance*, December 16, 1980. Knopf, Barstow, Griffin — 26 pages. (3)\*

Private secretary to manager — excluded from bargaining unit based on functions of superior: change in personnel and programmes did not change function; grievance dismissed. *Re Philco Ford and United Automobile Workers, Local 1980; Gray grievance*, December 2, 1980. Burkett — 14 pages. (4)

Temporary assignment of bargaining unit work — not sufficient to bring employee within the unit; grievances allowed. *Re Carleton University and Canadian Union of Public Employees, Local 2424; union grievances*, December 17, 1980. Carter — 12 pages. (5)

#### Bereavement Leave

Entitlement — discretion in management both as to granting and duration of leave; grievance dismissed. *Re Seaway Transport Canada and Canadian Brotherhood of Railway, Transport and General Workers' Union; MacNeur grievance*, November 28, 1980. Rayner — 6 pages. (6)

Paid holiday coinciding with bereavement — payment not automatic upon qualification for leave; grievors denied payment because paid holidays coincided with bereavement leave; grievances dismissed. *Re Eaton Yale Limited and United Automobile Workers, Local 127; Wright, Ripley and Shadd grievances*, December 15, 1980. O'Connor — 8 pages. (7)

#### Classification

Training positions abolished — undercutting seniority provisions of collective agreement: classifications ordered re-established; grievance allowed. *Re Noranda Metal Industries Limited and International Brotherhood of Electrical Workers, Local 2345; union grievance*, December 23, 1980. Samuels — 11 pages. (8)†

#### Collective Agreement

Conflict between provisions agreed to in negotiation and provisions later signed and ratified; terms of agreement prevail; grievances dismissed. *Re Sudbury Memorial Hospital and Ontario Public Service Employees' Union, Local 619; Boissonneault, Kontturi, Richard grievances*, November 26, 1980. Lunney, Buckland, Plamondon — 56 pages; addendum: Buckland — 3 pages. (9)

Retroactivity — fall holiday to be retroactive; grievance allowed. *Re Scarborough Centenary Hospital Association and Ontario Nurses' Association; Lavergne grievance*, November 14, 1980. Majority: Brunner, Symes — 11 pages; dissent: Shakes. (10)

#### Contracting Out

"Letter of understanding" speaking only in terms of "intention"—no substantive rights arising; grievance dismissed. *Re Carling O'Keefe Breweries of Canada Limited and Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers; Mullaly grievance*, December 2, 1980. Burkett — 12 pages. (11)

No express restriction — no bad faith; grievance dismissed. *Re Kennedy Lodge Nursing Home and Service Employees' Union, Local 204; union grievance*, December 1, 1980. Majority: Brunner, Rosen — 30 pages; partial dissent: Simon — 3 pages. (12)\*

#### Damages

Calculation where reinstatement — burden on employer to show grievor failed to mitigate; hours of work lost deemed consistent with prior and subsequent work schedule; unknown whether holidays would have been worked so payment at straight time. *Re 401548 Ontario Limited (Fairside Tavern) and Retail, Wholesale and Department Store Union, Local 448; Cain grievance*, December 9, 1980. Gorsky — 8 pages. (13)

Calculation where discharge — grievor entitled to compensation for employment to which he would have been entitled when wrongfully discharged; burden on grievor to show entitlement to positions: burden not met; grievance dismissed. *Re Hendrie and Company Limited and Canadian Brotherhood of Railway Transport and General Workers; Hatt grievance*, November 27, 1980. Majority: M. Picher, Beresford — 11 pages; dissent: Nelson — 2 pages. (14)

#### Demotion

Return of foreman to bargaining unit resulting in demotion — prior practice and collective agreement not of assistance to grievors; grievances dismissed. *Re Noranda Metal Industries Limited, Fergus Division, and International Brotherhood of Electrical Workers, Local 2345; Spedaliere, Watt grievances*, December 12, 1980. Majority: Shime, Wicke — 3 pages; dissent: Knipfel — 1 page. (15)

Technological change — company complying with terms of collective agreement; grievance dismissed. *Re Falconbridge Nickel Mines Limited and Sudbury Mine, Mill and Smelter Workers Union, Local 598; union grievance*, December 12, 1980. Majority: Shime, Valin — 6 pages; dissent to follow: Richards. (16)

#### Discharge

Absence because of jail sentence — approval for leave of absence unreasonably withheld by employer; grievor entitled to return when work available to him; grievance allowed. *Re Holland Hitch of Canada Limited and United Automobile Workers, Local 636; Kelly grievance*, December 8, 1980. Palmer — 9 pages. (17)\*

Absent without permission for three consecutive days — no discretion to substitute lesser penalty; grievance dismissed. *Re Carling O'Keefe Breweries of Canada Limited and Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers, Local 325; Ruff grievance*, November 27, 1980. Curtis — 6 pages. (18)

Absenteeism — culminating incident; grievance dismissed. *Re Central Bridge Company and United Steelworkers of America, Local 3599; Judson grievance*, December 22, 1980. Hinnegan — 4 pages. (19)

Absenteeism — evidence indicating prognosis for future attendance not good; grievance dismissed. *Re Hiram Walker and Sons Limited and United Automobile Workers, Local 2027; Gillis grievance*, December 9, 1980. Brent — 15 pages. (20)

Absenteeism because of alcoholism — good prognosis for rehabilitation; penalty lessened to suspension without pay until September 1, 1981. *Re Board of Education for City of North York and Ontario Secondary School Teachers' Federation, District 13; Smallbridge grievance*, December 1, 1980. Majority: Carter — 9 pages; Posen — 2 pages; dissent: Brady — 7 pages. (21)

Absenteeism; culminating incident — no reasonable prognosis of improvement; grievance dismissed. *Re Canada Packers Limited and Canadian Food and Allied Workers; Stevens grievance*, December 15, 1980. Swan, Lewis, Williamson — 13 pages. (22)

Abuse of sick leave — grievor reinstated without compensation; grievance allowed. *Re Wellington County Board of Education and Ontario Secondary School Teachers' Federation, District 39; Winter grievance*, December 19, 1980. Majority: Carter, Posen — 10 pages; dissent: Stewart — 4 pages. (23)

Assault — minor, momentary flare-up: suspension substituted, grievor to apologise; grievance allowed. *Re Ontario Paper Company Limited and Canadian Paperworkers Union, Local 84; Perkins grievance*, December 8, 1980. Majority: Brent, Tate — 11 pages; dissent: Barley — 3 pages. (24)

Assault upon supervisor — grievance dismissed. *Re Dominion Textile Inc. and United Textile Workers of America, Local 469; Lepage grievance*, December 5, 1980. Majority: D. Scott, Dobbyn — 6 pages; dissent: Myslowka. (25)

Break, enter and theft of employer's property alleged — while grievor found not guilty at criminal trial, his actions constitute serious misconduct; grievor's disciplinary record and medical condition considered; suspension substituted. *Re Lake Ontario Cement Limited and United Cement, Lime and Gypsum Workers International Union, Local 387; Breckenridge grievance*, December 5, 1980. Majority: Brunner, Nokes — 20 pages; dissent: Morley — 3 pages. (26)

Conspiracy to commit fraud on the company alleged — grievor guilty of alleged offence; grievance dismissed. *Re Dominion Stores Limited and United Steelworkers of America, Local 14045; Walker grievance*, December 10, 1980. Rayner — 10 pages. (27)

Culminating incident — employer did not discharge onus to establish just cause for discipline in incident; grievance allowed. *Re Steel Company of Canada Limited and United Steelworkers of America, Local 1005; Spencer grievance*, December 18, 1980. Majority: H.D. Brown, Krouse — 12 pages; dissent: Baker — 4 pages. (28)

Culminating incident; lateness and absenteeism — progressive discipline not imposed; reinstatement without compensation. *Re Canadian Hearing Society and Canadian Union of Public Employees, Local 2073; Vorontsov grievance*, December 5, 1980. Betcherman — 9 pages. (29)†

Failure to notify employer of absence; false testimony at hearing — lengthy suspension appropriate. *Re St. Charles Tavern and International Beverage Dispensers' and Bartenders' Union, Local 280; Gilbert grievance*, December 12, 1980. Springate — 23 pages. (30)

Failure to report after leave of absence — grievor not given written confirmation of leave — resulting in confusion over date of return; grievance allowed. *Re Toronto Western Hospital and Canadian Union of Public Employees, Local 1744; Seed grievance*, December 29, 1980. Majority: Dunn, Walsh — 8 pages; dissent: McGowan — 1 page. (31)

"Just cause" provision absent from collective agreement — not to be implied; grievance dismissed. *Re Retail, Wholesale and Department Store Union, Local 414, and Retail, Wholesale and Department Store Union Representatives Association of Ontario; Collins grievance*, November 28, 1980. MacDowell — 17 pages. (32)\*

Leaving work early because of sickness — failure to follow procedure; grievance allowed in part. *Re Algoma Steel Corporation Limited and United Steelworkers of America, Local 2251; Signoretti grievance*, December 1, 1980. Rayner, Shultz, Drmaj — 8 pages. (33)

Negligence — highway accident: excessively long shift: alcohol present but not responsible; reinstatement without compensation; grievance allowed. *Re Maple Lynn Foods Limited and Ontario Poultry, Dairy and Allied Workers Council; Bowes grievance*, November 14, 1980. Majority: Teplitsky — 7 pages; Switzman — 1 page; dissent: Caplan — 2 pages. (34)

Negligent and incompetent ship handling; demonstrated poor attitude — mere suspension may not be appropriate response for breach of professional duty; grievance dismissed. *Re Canadian Lake Carriers Association and Canadian Merchant Service Guild; Rae grievance*, November 28, 1980. O'Shea — 27 pages. (35)

Pilferage of scrap and possession of marijuana alleged — not established; grievance allowed. *Re Quaker Oats Company of Canada Limited and United Food and Commercial Workers Local 293-1; Harvey grievance*, December 4, 1980. O'Connor — 10 pages. (36)†

Pilferage of scrap and possession of marijuana — discharge reduced to four-month suspension. *Re Quaker Oats Company of Canada Limited and United Food and Commercial Workers Local 293-1; McBride grievance*. See (36), *supra*. (37)†

Possession of employer's property — error of judgement: reinstatement without compensation. *Re Oshawa, Corporation of City of, and Canadian Union of Public Employees, Local 250; Shortt grievance*, November 3, 1980. Majority: Carter, Lewis — 7 pages; dissent: Wakely — 6 pages. (38)

Probationary employee — not patently unreasonable; grievance dismissed. *Re Uniroyal Limited (Tire Factory and Rubber Machinery Shops of Kitchener, Ontario) and Local Union No. 80, United Rubber, Cork, Linoleum and Plastic Workers of America; Fulford grievance*, December 1, 1980. Brunner — 9 pages. (39)

Sexual harassment — no prior discipline: brief suspension substituted. *Re Nanticoke, City of, and Canadian Union of Public Employees, Local 246; Decker grievance*, December 4, 1980. Barton — 8 pages. (40)\*†

Superintendent "team" discharged for refusal of wife to perform extra duties — terms of agreement require employer to pay for duties above those set out; grievance allowed. *Re Avena Investments Limited and Labourers' International Union of North America, Local 183; Duranceau grievance*, November 27, 1980. Delisle — 7 pages. (41)

Theft — grievor admitted to taking money; grievance denied. *Re Boots Drug Stores (Canada) Limited and Retail Clerks Union, Local 206; Haynes grievance*, November 28, 1980. Rayner, Lanigan, Strickland — 7 pages. (42)

Theft — prior discipline; grievance dismissed. *Re Newman Steel Limited and United Steelworkers of America; McBride grievance*, December 11, 1980. Brandt — 16 pages. (43)

Theft of employer's property — disciplinary record considered; grievance dismissed. *Re Falconbridge Copper Limited and Sudbury Mine, Mill and Smelter Workers' Union, Sturgeon Lake Section; Lynett grievance*, December 5, 1980. H.D. Brown — 7 pages. (44)

Unlawful possession of company property — lengthy suspension without loss of seniority and without compensation. *Re Fleet Industries, A Division of Ronyx Corporation Limited, and Frontier Lodge 171 International Association of Machinists and Aerospace Workers; Brown grievance*, December 9, 1980. J.L. Roberts — 24 pages. (45)

Warning and subsequent discharge — warning to be ultimate penalty; grievor cannot be placed in further jeopardy; grievance allowed. *Re Ray Plastics Limited and International Leather Goods, Plastic and Novelty Workers' Union, Local 8, Toronto; Thomas grievance*, December 29, 1980. Majority: Dunn, Simon — 8 pages; dissent: Beamish — 4 pages. (46)

Work performance unsatisfactory — discharge too severe; reinstatement without compensation. *Re Council of Printing Industries of Canada and Graphic Arts International Union; Gadway grievance*, November 24, 1980. Rayner, Smith, O'Reilly — 12 pages; addendum: O'Reilly — 1 page. (47)

#### Discipline

Breach of employer's safety rules — employer failed to impress upon grievor the inappropriateness of his actions; past disciplinary record and grievor's conduct at hearing considered; suspension reduced. *Re Glendale Spinning Mills Limited and Amalgamated Clothing and Textile Workers Union, Local 1070-T; Vonic grievance*, December 8, 1980. Majority: McLaren, Wright — 10 pages; dissent: Hainsworth. (48)

Consumption of alcohol on job — circumstantial evidence sufficient to shift burden of proof to grievors: burden not met; grievance dismissed. *Re Noranda Mines Limited (Geco Division) and Canadian Union of Base Metal Workers; group grievance*, December 15, 1980. Burkett — 13 pages. (49)

Failure to follow instructions — company failed to satisfy onus of establishing grievor's guilt; grievance allowed. *Re Alexander Centre Industries Limited and United Steelworkers of America, Local 7842; Gollan grievance*, December 17, 1980. Majority: O'Shea, Carrière — 11 pages; dissent: McNamara — 2 pages. (50)

Fighting — arbitrary suspension imposed: onus on employer to investigate incidents prior to imposing discipline; suspension shortened with compensation; grievance allowed. *Re Dominion Chain Company Division, Welland Forge Limited, and International Association of Machinists and Aerospace Workers, Local 1927; Wilson grievance*, October 20, 1980. Majority: Verity, Lewis — 13 pages; dissent: Beresford — 2 pages. (51)

Illegal strike: refusal to work while wearing eye protection devices — refusal to work participation in an unlawful strike; grievances denied. *Re Abitibi Paper Company Limited (Iroquois Falls Woods Division) and Lumber and Sawmill Workers' Union, Local 2995; group grievances*, November 13, 1980. Majority: Brunner, Filion — 29 pages; dissent: Fyshe — 6 pages. (52)

Insubordination — employer inconsistent in disciplining employees; five-day suspension reduced to two-day suspension. *Re Sunnybrook Hospital and Sunnybrook Hospital Employees Union, Local 777; Abrams grievance*, December 23, 1980. Majority: Saltman — 15 pages; partial dissent: Beaulieu — 1 page; dissent: Reistetter — 1 page. (53)

Insubordination; aggressive and unco-operative attitude — reinstated as group leader with written reprimand and no compensation. *Re Federal Pioneer Limited and International Union of Electrical, Radio and Machine Workers, Local 564; DeCastro grievance*, December 12, 1980. Majority: Shime, Aslin — 5 pages; dissent: Byers — 1 page. (54)

Insubordination — grievor's claim that performance of work would be dangerous not substantiated; sections 23 and 24 of *The Occupational Health and Safety Act* not applicable; grievance dismissed. *Re Cannaet Freight Cartage Limited and Teamsters Local Union No. 419; Partridge grievance*, December 5, 1980. Kennedy — 12 pages. (55)

Intoxication: off-duty visit to plant — minimal disruption; suspension shortened. *Re Westeel-Rosco Limited and Teamsters Union, Local 847; Neilson grievance*, November 13, 1980. Teplitsky, Simon, Sargeant — 4 pages. (56)

Lateness — five-day suspension appropriate; grievance dismissed. *Re Steel Company of Canada Limited, Hilton Works, and United Steelworkers of America, Local 1005; Toneguzzi grievance*, December 2, 1980. Majority: Kennedy, Baker — 9 pages; dissent: Marshall. (57)

Lateness — misunderstanding between grievor and supervisor as to starting time; grievance allowed. *Re Steel Company of Canada Limited and United Steelworkers of America, Local 1005; Hall grievance*, December 4, 1980. Palmer, Brady, Marshall — 8 pages; addendum: Brady — 1 page. (58)

Lateness — subsequent excuse suspect; prior discipline: grievance dismissed. *Re Stelco Inc. and United Steelworkers of America, Local 1005; Palka grievance*, December 8, 1980. Majority: Brent, Riggs — 13 pages; dissent: Elder. (59)

Misrepresentation: off-work accident reported as industrial accident — penalty "within the range of" reasonable; grievance dismissed. *Re Stelco Inc. and United Steelworkers of America, Local 1005; Stubbs grievance*, December 8, 1980. Majority: Brent, Gray — 9 pages; dissent: Marshall. (60)

Sexual harassment and threats of revenge — grievance dismissed. *Re Wardair (1975) Limited and International Association of Machinists and Aerospace Workers, Local 2413; Alvarez grievance*, December 15, 1980. O'Shea — 19 pages. (61)

Sleeping on the job — four-day suspension; grievance dismissed. *Re Sherman Mine, Cliffs of Canada, Limited and United Steelworkers of America, Local 6896; Sauvé grievance*, December 22, 1980. Hinngan — 5 pages. (62)

Vandalism during strike alleged — not proven; grievance allowed. *Re Bell Canada and Communications Workers of Canada; Hofstede grievance*, November 28, 1980. Majority: Shime, Switzman — 11 pages; dissent: Hersey — 3 pages. (63)

Work performance — failure to meet production standards: warning justified; grievance dismissed. *Re Keeprite Products Limited and Keeprite Workers' Independent Union; Lewis grievance*, November 28, 1980. Hinngan — 7 pages. (64)

Work performance unsatisfactory — no evidence of abuse of company property; grievance allowed in part. *Re Bell Canada and Communications Workers of Canada; Hale grievance*, December 22, 1980. Majority: M. Picher, Healy — 10 pages; dissent: Switzman. (65)

#### Employment Status

Part-time employees working in excess of twenty-four hours per week — still part-time because no transfer or reclassification; grievances dismissed. *Re Temiskaming Hospitals and Canadian Union of Public Employees, Local 904; Puhakka and Labonte grievances*, November 24, 1980. Majority: H.D. Brown, Buckland — 10 pages; dissent: Belanger — 1 page. (66)

Teachers hired to replace teachers on leave of absence — to be contract teachers; grievance allowed. *Re Board of Education for City of Toronto and Ontario Secondary School Teachers' Federation, District 15; policy and group grievance*, December 19, 1980. Majority: Adams, Posen — 13 pages; partial dissent: Filion. (67)

Termination — absence because of work-related injury terminating employment relationship; grievances dismissed. *Re Waterloo, Regional Municipality of, (Sunnyside Home) and London and District Service Workers' Union, Local 220; Rosenworth and Cowan grievances*, October 22, 1980. Majority: Ord, Boehmer — 9 pages; dissent: Walsh. (68)

#### Estoppel

Acquiescence in employer's interpretation — estoppel terminated; grievance allowed. *Re Carefree Lodge and Ontario Nurses' Association; group grievance*, December 17, 1980. Majority: Beatty, Symes — 7 pages; dissent: Rusak — 2 pages. (69)\*

Prior settlements alleged — not giving rise to estoppel; grievance dismissed. *Re Randa Developments Limited (Tridel) and Metropolitan Toronto Apartment Builders Association and Toronto Building and Construction Trades Council and United Brotherhood of Carpenters and Joiners of America, Local 1190; union grievance*, December 8, 1980. Burkett — 38 pages. (70)

#### Evidence

Testimony from prior arbitration — grievor's testimony admissible; other witnesses' testimony inadmissible as hearsay. *Re Firestone Steel Products of Canada and United Automobile Workers, Local 27; Carroll grievance*, December 2, 1980. McLaren — 17 pages. (71)\*

#### Grievance Procedure

Failure to reply to grievances on job evaluation — requirement to process grievances; grievances allowed. *Re Philips Electronics Limited and Local 1590 International Brotherhood of Electrical Workers; union grievances*, November 26, 1980. Majority: O'Shea, Sanderson — 18 pages; dissent: Miller. (72)

Timeliness — continuing grievance; grievance timely. *Re Temiskaming Hospitals and Canadian Union of Public Employees, Local 904; Puhakka and Labonte grievances*. See (66), *supra*. (73)

Timeliness — delay in filing grievance; no reasonable grounds for relieving against time limit. *Re Toronto Western Hospital and Canadian Union of Operating Engineers and General Workers, Local 101; Fedeyko grievance*, December 11, 1980. Majority: Brent, McGowan — 9 pages; dissent: Sleva — 5 pages. (74)

#### Holiday Pay

Qualifying days: grievor leaving without permission during final pre-holiday shift — failure to work full shift a disciplinary matter not affecting holiday pay entitlement; grievance allowed. *Re Stran-Steel Division, Westeel Rosco Limited, and Teamsters Union, Local 847; holiday pay grievance*, December 9, 1980. Majority: Betcherman, Simon — 7 pages; dissent: Craig — 5 pages. (75)\*

Qualifying days; grievor on vacation on day preceding holiday: grievance allowed. *Re Fortune Footwear Division, Susan Shoe Industries, and United Textile Workers of America, Local 369; Lewandowski grievance*, November 26, 1980. Majority: Hunter, Bouchard — 7 pages; dissent: Carew. (76)

Sickness indemnity received concurrently — employer can count sick pay toward holiday pay; grievance dismissed. *Re Delamere and Williams Company Limited and United Electrical, Radio and Machine Workers of America, Local 512; Bratuljevic grievance*, December 1, 1980. Majority: Saltman, McGowan — 8 pages; dissent: Lucas — 3 pages. (77)

#### Illness

Injury renders grievor unfit to return to job — grievance denied. *Re Kelsey-Hayes Canada Limited and United Automobile Workers, Local 195; Vagi grievance*, December 22, 1980. Samuels — 5 pages. (78)

Return to work — no express request to return to work; grievance dismissed. *Re Dominion Stores Limited, Toronto Warehousemen, and Retail, Wholesale and Department Store Union, Local 414; Sciberras grievance*, December 4, 1980. Majority: Hinngan, Sargeant — 7 pages; dissent: Dahmer — 3 pages. (79)

**Interpretation**

Mutual mistake — objective meaning of language to be used; grievances allowed. *Re Ontario Jockey Club and Mutual Employees' Association, Local 528, Service Employees' International Union; union grievances*, November 14, 1980. Carter, Dunsmore, Tate — 11 pages. (80)\*

**Job Posting**

Foreman returned to bargaining unit — no job posting required; grievance dismissed. *Re Noranda Metal Industries Limited, Fergus Division, and International Brotherhood of Electrical Workers, Local 2345; union grievance*, December 12, 1980. Majority: Shime, Wickie — 5 pages; dissent: Knipfel — 1 page. (81)

**Job Vacancy**

Creation of new job title — not a sufficient change to characterize it as a "new position" requiring a job posting; grievance dismissed. *Re Scarborough General Hospital and Ontario Nurses' Association; union grievance*, December 5, 1980. Majority: Palmer, Levis — 14 pages; dissent: Switzman. (82)

Existence of vacancy — introduction of new machine did not have effect of creating new positions; job postings not required. *Re Consolidated-Bathurst Packaging Limited and International Woodworkers of America, Local 2-337; policy grievance*, December 22, 1980. Saltman, Rogers, Millard — 6 pages; addendum: Millard — 5 pages. (83)

**Lay-off**

Notice claimed — lay-off foreseeable; grievance allowed. *Re Rexwood Products Limited and Lumber and Sawmill Workers Union, Local 2995 of the United Brotherhood of Carpenters and Joiners of America; union grievance*, November 24, 1980. Majority: H.D. Brown, Fyshe — 19 pages; dissent: Wadge — 2 pages. (84)

Qualifications — grievor lacking ability to perform job: grievance dismissed. *Re Leigh Instruments Limited and United Automobile Workers, Local 1821; Connor grievance*, December 24, 1980. Majority: Hinnegan, Boehmer — 6 pages; dissent: Cooper — 1 page. (85)

**Overtime**

Distribution — failure to assign not justified by earlier refusal to work overtime; grievance allowed. *Re Bundy of Canada Limited and United Automobile Workers, Local 1352; group grievance*, November 26, 1980. O'Shea — 13 pages. (86)

Entitlement — maintenance work to be assigned to less-senior maintenance employees; grievances dismissed. *Re National Grocers Company Limited and Teamsters Union, Local 419; Burt grievances*, November 28, 1980. Majority: Beatty, O'Byrne — 10 pages; dissent: McRae — 2 pages. (87)

Entitlement depending on qualification to perform job function — grievor failing to discharge onus; grievance dismissed. *Re Dominion Textile Inc. and United Textile Workers of America, Local 468; Sommerville grievance*, December 1, 1980. Majority: Simmons, Dobbyn — 9 pages; dissent: Bosnich. (88)

Shift continuing to next day — still work of day of commencement: higher overtime rate for extra day not applicable; grievances dismissed. *Re Crothers Limited and United Automobile Workers; Froates grievances*, November 24, 1980. O'Shea, Churchill-Smith, Cooper — 8 pages. (89)

**Plant Closings**

Closure of warehouse; company acting unilaterally — required to negotiate under collective agreement; grievance allowed. *Re Interbake Foods Limited (London) and American Federation of Grain Millers, Local 242; warehouse employees and drivers grievance*, December 11, 1980. Majority: Ianni, Pensa — 14 pages; dissent: Farrar — 5 pages. (90)

**Premium Pay**

Charge nurse premium — "head nurse" duties in new hospital corresponded substantially to the duties exercised in old hospital, entitling each nurse to the shift premium; grievance allowed. *Re Temiskaming Hospital and Ontario Nurses' Association; Lachapelle grievance*, November 21, 1980. Teplitsky, Symes, Karam — 5 pages. (91)

Shift differential for specified hours — grievor not working those hours; grievance dismissed. *Re Halton Regional Board of Commissioners of Police and Halton Regional Police Association; Cormier grievance*, December 11, 1980. Saltman — 5 pages. (92)

**Promotion**

Designation as "Acting Chief" — same classification and rate of pay, only potential temporary new duties: not a promotion; selection reasonable; grievance dismissed. *Re Richmond Hill, Corporation of Town of, and Richmond Hill Professional Fire Fighters Association, Local 1957; Lazenby grievance*, December 3, 1980. P. Picher — 26 pages. (93)

Evaluation of qualifications — evaluation proper; grievance dismissed. *Re Children's Aid Society of Metropolitan Toronto and Staff Association of Children's Aid Society of Metropolitan Toronto; McFarland grievance*, November 28, 1980. Kennedy, Ballantyne, Wright — 11 pages. (94)\*

Prescreening of job applications — method found to be a fair and straightforward test of applicants as required by collective agreement; grievance dismissed. *Re City of Toronto, Corporation of, and Metropolitan Toronto Civic Employees Union, Local 43; McDonald grievance*, December 4, 1980. Majority: Samuels, Milks — 11 pages; dissent: Tate — 4 pages. (95)

Qualifications — difference between posted qualifications and those actually entertained; grievor qualified for posted position; grievance allowed. *Re York University and York University Staff Association; Ferris grievance*, December 9, 1980. Delisle — 19 pages. (96)†

Qualifications — employer disregarding training period provided for in collective agreement when deciding grievor lacked qualifications for position; grievance allowed.

*Re Sparton of Canada Limited and United Automobile Workers, Local 27; Robicheau grievance*, December 12, 1980. Gorsky — 14 pages. (97)

Qualifications — grievor less qualified since requiring familiarization; grievance dismissed. *Re Quaker Oats Company of Canada Limited and United Food and Commercial Workers, Local P 293-1; Haddlesey grievance*, December 12, 1980. Betcherman — 9 pages. (98)†

Qualifications — grievor not eligible applicant for job in question; grievance dismissed. *Re Davidson Rubber Company Limited and United Rubber, Cork, Linoleum and Plastic Workers of America, Local 889; Lambert grievance*, December 16, 1980. Majority: Kennedy, MacDermid — 12 pages; dissent: Bruder. (99)

Qualifications — grievor not relatively equal; grievance dismissed. *Re Canadian International Paper Company and Canadian Chemical Workers Union, Local 29; Rankin grievance*, November 24, 1980. Palmer — 8 pages. (100)

Qualifications — insufficient documentation of relevant experience as a carpenter — not qualified for test; grievance denied. *Re Allied Chemical Canada Limited, Amherstburg, Ontario, and Local 89, United Automobile Workers; Stacyszyn grievance*, December 2, 1980. Kruger — 6 pages. (101)

Qualifications — present potential to perform work at time of selection, not a present ability; grievance allowed. *Re Seaway Transport Canada and Canadian Brotherhood of Railway, Transport and General Workers' Union; Elliott grievance*, November 26, 1980. Rayner — 7 pages. (102)

#### Res Judicata

Issue estoppel — Ontario Labour Relations Board determination not giving rise to issue estoppel re collective agreement violation. *Re Kennedy Lodge Nursing Home and Service Employees' Union, Local 204; union grievance*. See (12), *supra*. (103)\*

#### Scheduling of Work

Continued employment of part-time employees resulting in reduced hours of work for full-time employees — grievances allowed. *Re Metropolitan Stores of Canada Limited and Northern Ontario and Quebec District Union of Retail, Wholesale and Department Store Union; Miller, Gauvreau, Lefebvre grievances*, December 3, 1980. Majority: McCulloch, Prudhomme — 5 pages; dissent: Carr — 6 pages; addendum — 8 pages. (104)

New shift week established — language of agreement not specific enough to curtail management's right to direct the work force; grievance dismissed. *Re Thibodeau-Finch Transport Limited and Local 880, Maintenance Group; Lewchuck grievance*, December 8, 1980. Majority: R.J. Roberts, Linder — 6 pages; dissent: Kobryn. (105)

Reduction of grievor's hours of work when employees with less seniority working hours than grievor ready, willing and able to work — grievances allowed. *Re Metropolitan Stores of Canada Limited and Northern Ontario and Quebec District Union of Retail, Wholesale and Department Store Union; Miller, Gauvreau, Lefebvre grievances*. See (104), *supra*. (106)

#### Seniority

Bumping rights — employer required to contact employee after twenty-four hour lay-off in order to allow exercise of seniority bumping rights in other departments; grievance allowed. *Re Champlain Sept-Iles Express Interprovincial and Teamsters Union, Local 939; DeRouese grievance*, December 2, 1980. Majority: McLaren, Petryshen — 20 pages; dissent: Grossman — 4 pages. (107)

Seniority acquired outside bargaining unit to be counted for position inside unit in absence of terms to contrary — grievance dismissed. *Re Sarnia, Corporation of City of, (Marshall Gowland Manor) and Ontario Nurses' Association; Matthews grievance*. See (2), *supra*. (108)\*†

#### Sick Leave

Pay-out of sick-leave credits — agreement unambiguous in specifying one hundred and eighty days; grievance allowed. *Re Board of Commissioners of Police of City of Brockville and Brockville Police Association; McClure grievance*, December 1, 1980. Welling — 18 pages. (109)

#### Sick Pay

Calculation of benefit — employment prior to re-hiring not to be counted; grievance dismissed. *Re Canadian Car Division, Hawker-Siddeley Canada Limited, and Office and Professional Employees International Union, Local 81; Zeleny grievance*, December 16, 1980. Duchesneau-McLachlan — 7 pages. (110)

Entitlement — grievor's participation in bar-room altercation from which injury resulted does not constitute a claimable "accident"; grievance dismissed. *Re B.F. Goodrich Canada Limited and United Rubber Workers, Local 677; Meinzinger grievance*, December 2, 1980. Majority: Brandt, Martin — 5 pages; dissent: Bruder. (111)

Failure to report on a daily basis — no entitlement to sick pay; grievance dismissed. *Re Toronto Star Newspaper Limited and Southern Ontario Newspaper Guild; Pasquino grievance*, November 24, 1980. Prichard — 9 pages. (112)†

#### Transfer

Bumping rights not applicable; duty of fairness applicable — one grievance allowed. *Re Drug Trading Company Limited and Druggists' Corporation Limited and Canadian Chemical Workers' Union; group grievance*, December 16, 1980. Schiff — 11 pages. (113)†

Just cause required — employer's actions reasonable and just; grievance dismissed. *Re Windsor Board of Education and Canadian Union of Public Employees, Local 27; policy grievance*, December 9, 1980. Samuels — 9 pages. (114)†

Lateral transfer — no discrimination, discipline or penalty; employer can transfer to promote company's welfare; grievance dismissed. *Re Zehrs Markets and Retail Clerks Union, Local 1977; Kidd grievance*, December 8, 1980. Brent, Sargeant, Armstrong — 12 pages. (115)

#### Travel Allowance

Entitlement — payment to be made for thirty days after notification of relocation of reporting centre, not commencement of work; grievance denied. *Re Bell Canada and Communications Workers of Canada; Konig grievance*, December 17, 1980. Majority: Beatty — 10 pages; partial dissent: Hersey — 1 page; dissent to follow: Switzman. (116)

Transfer — transfer must necessitate additional travelling of over a minimum of twenty miles according to collective agreement; extrinsic evidence considered; grievance dismissed. *Re Peterborough-Victoria-Northumberland and Newcastle Roman Catholic Separate School Board and Ontario English Catholic Teachers' Association, Peterborough Unit; Hart grievance*, October 21, 1980. Majority: Teplitsky, Sherlock — 7 pages; dissent: Nelson — 1 page. (117)

#### Union Security

Sub-contracting restriction — not applicable to type of work; grievance dismissed. *Re Randa Developments Limited (Tridel) and Metropolitan Toronto Apartment Builders Association and Toronto Building and Construction Trades Council and United Brotherhood of Carpenters and Joiners of America, Local 1190; union grievance*. See (70), *supra*. (118)

#### Vacation Pay

Calculation — gross earnings to include vacation pay previously paid; grievance allowed. *Re St. Peter's Hospital and St. Peter's Hospital Employees' Union, Local 778 Canadian Union of Public Employees; union grievance*, December 23, 1980. O'Connor — 7 pages. (119)\*†

Calculation — "total earnings" to include prior vacation pay; grievance allowed. *Re Frankel Steel Limited and Shopmen's Local Union 834 of International Association of Bridge, Structural and Ornamental Iron Workers; Wesley grievance*, December 15, 1980. Dunn — 6 pages. (120)

Entitlement period spanning two collective agreements — entitlement determined pursuant to provision of current agreement; grievance dismissed. *Re Sisman's Holdings Limited and United Food and Commercial Workers of North America, Local P-486; policy grievance*, December 17, 1980. O'Shea — 10 pages. (121)

#### Wages

Temporary employee within bargaining unit but wage rate not set out in collective agreement — Board could not alter collective agreement so no specific award relating to rate of pay. *Re Public Utilities Commission of Strathroy, Ontario, and Canadian Union of Public Employees, Local 14; union grievance*, December 24, 1980. Brandt, Donnelly, Senay — 10 pages. (122)

#### Work Assignment

Foreman performing bargaining unit work — not on emergency because work could have been assigned earlier; grievance allowed. *Re Etatech Industries Inc. and United Automobile Workers, Local 397; Scott grievance*, November 25, 1980. Rayner — 8 pages. (123)

Pick-up of loads assigned to driver from other terminal — within right to assign work; grievance allowed. *Re Bulk Carriers Limited and Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 880; group grievance*, December 2, 1980. Majority: McLaren, Singleton — 9 pages; dissent: McRae. (124)

Work performed by members of two unions integrated into one classification — in good faith for business efficiency; grievance dismissed. *Re Ontario Paper Company Limited and International Brotherhood of Electrical Workers, Local 914; union grievance*, November 25, 1980. Majority: J.L. Roberts, Dinsdale — 11 pages; dissent: Wacheski — 2 pages. (125)

The following awards in interest arbitrations under *The Hospital Labour Disputes Arbitration Act* were also filed with the Office of Arbitration during the month of December, 1980.

*La Verendrye General Hospital and Ontario Nurses' Association*, Saltman, Laing, Switzman — 29 pages; addendum: Switzman — 1 page.

*Medi-Park Lodges Inc. (carrying on business as Oakwood Park Lodge and carrying on business as Grace Abbey) and Service Employees' Union, Local 204*, Baum — 8 pages; partial dissent: Graham — 1 page; partial dissent: Beaulieu — 2 pages.

*North Centennial Manor and Canadian Union of Public Employees, Local 1214*, (supplemental award), Baum, Rukavina, Pharand — 2 pages.

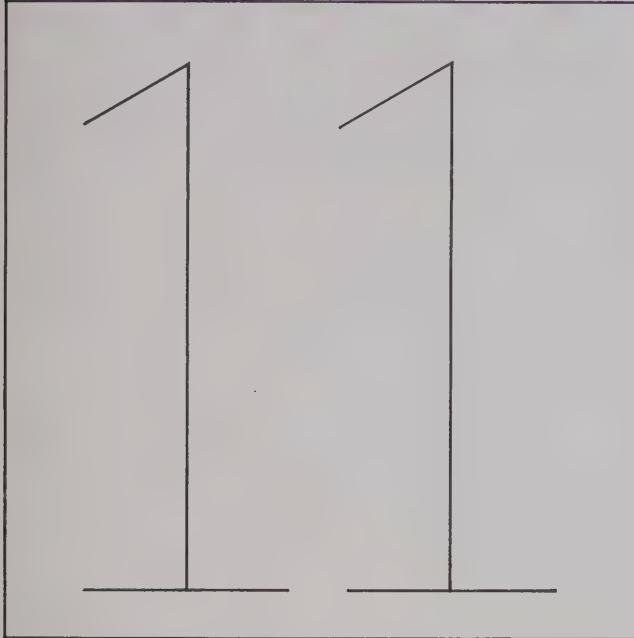
*Participating Hospitals (A Group of 30 Hospitals) and Canadian Union of Operating Engineers and General Workers*, Samuels, Sargeant — 19 pages; appendix — 7 pages; dissent: Harrison.

*Rest Haven Nursing Home of St. Williams 1974 Limited and London and District Service Workers' Union, Local 220, (full-time)*, Waisglass, Walsh — 6 pages; appendix — 1 page; dissent: Humphrey — 5 pages.

*Rest Haven Nursing Home of St. Williams 1974 Limited and London and District Service Workers' Union, Local 220, (part-time)*, Waisglass, Walsh — 5 pages; appendix — 1 page; dissent: Humphrey — 4 pages.

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# Monthly Bulletin



Office of Arbitration

Miss Jean M. Read, Director



Ontario

Ontario Ministry of Labour  
400 University Avenue, 6th Floor  
Toronto, Ontario  
M7A 1T7  
Tel. (416) 965-5669

Hon. Robert Elgie, M.D., Minister  
T.E. Armstrong, QC, Deputy Minister

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persons involved in labour-management  
arbitrations.

#### Appointment of Arbitrators

Forms for requests for appointment of arbitrator under section 37a of *The Labour Relations Act* are available on request, from the Office of Arbitration.

#### Approved Arbitrators

The following people successfully completed the Ministry of Labour's 1981 Arbitrator Development Programme and have been added to the approved panel:

Mr. Deryck Adamson, 100 Rowena Drive, Apartment 909, Don Mills, Ontario, M3A 1R1; telephone (416) 445-3799.

Mr. Norman Bernstein, 348 Daly Avenue, Ottawa, Ontario, K1N 6G9; telephone (613) 236-9127.

Mr. Donald L. Black, 1 Kingsborough Crescent, Weston, Ontario, M9R 2T8; telephone (416) 243-5401.

Dr. George Eaton, York University, Atkinson College, Economics Department, 4700 Keele Street, Downsview, Ontario, M3J 2R7; telephone (416) 667-3235 or (416) 224-5156.

Mr. John A. Houston, 120 Widdicombe Hill Boulevard, Apartment 1403, Weston, Ontario, M9R 4A6; telephone (416) 241-4712.

Professor Joseph B. Rose, McMaster University, Faculty of Business, 1280 Main Street West, Hamilton, Ontario, L8S 4M4; telephone (416) 525-9140, extension 4435.

Also added to the panel are the following:

Mr. Rory F. Egan, 318 Lenel Court, Mississauga, Ontario, L5A 1R9; telephone (416) 965-0200.

Mr. Edward B. Jolliffe, Q.C., Box 136, Rockwood, Ontario, N0B 2K0; telephone (519) 856-9116.

His Honour, Judge Walter Little, Suite 500, Empire Life Building, 259 King Street East, Kingston, Ontario, K7L 4Y5; telephone (613) 544-0211.

Professor J. Robert S. Prichard, Faculty of Law, University of Toronto, Toronto, Ontario, M5S 1A1; telephone (416) 978-4907.

Mr. Stuart B. Scott, c/o Messrs. Girard and Scott, Barristers & Solicitors, 117 May Street North, Suite 200, Thunder Bay, Ontario, P7C 3N8; telephone (807) 623-2211.

**Expedited Grievance Arbitration**

Requests for expedited grievance arbitration under section 37a of *The Labour Relations Act* have reached a total of 493 applications for the period September 1, 1979 to March 31, 1981. Of this number, 68 were subsequently withdrawn, being untimely, and 276, or 65% of the balance, were settled without a hearing.

Over 200 requests have been received for grievance mediation assistance outside the above legislation, on a voluntary basis, and Grievance Settlement Officers assisted the parties to settle in 85% of these cases.

**Awards**

The following awards were filed with the Office of Arbitration during the month of January, 1981.

The summary was prepared at the Faculty of Law, Queen's University, under the supervision of C.G. Simmons, B.A., B.C.L., LL.M.; D.D. Carter, B.A., B.C.L., LL.B. and K.P. Swan, P. Eng., LL.B.

\* Indicates award to be reported in full or in part in *Labour Arbitration Cases*.

† Indicates award issued under section 37a of *The Labour Relations Act*.

**Arbitrability**

Successor union — agreement with successor union not yet in effect; continuation of earlier arbitration provision prevented by s. 48(1) of *The Labour Relations Act*; grievance dismissed. *Re Plainfield Children's Home and Service Employees International Union, Local 183; Steenburg grievance*, October 30, 1980. D.J.M. Brown — 11 pages; Laing — 2 pages; Burshaw — 3 pages. (1)\*

Tentative work assignment — not grievable as agreement prohibits only "established" teaching loads; grievance dismissed. *Re Fanshawe College and Ontario Public Service Employees' Union; Meikle grievance*, December 12, 1980. Brunner, Wright, Kearney — 6 pages. (2)

**Bargaining Unit**

Scope of unit — part-time relief supervisors are included in unit; ambiguity in recognition clause resolved by reference to prior agreement; grievance allowed. *Re Leisure World Nursing Home and Ontario Nurses' Association, Local 201; policy grievance*, January 14, 1981. Majority: R.J. Roberts, Switzman — 5 pages; dissent: Farrar — 3 pages. (3)

Scope of unit — union entitled to represent employees on second floor lounge of tavern; lounge remains part of entire licensed establishment; grievance allowed. *Re Imperial Tavern and International Beverage Dispensers' and Bartenders' Union of the Hotel and Restaurant Employees' and Bartenders' International Union, Local 280; union grievance*, January 19, 1981. Majority: O'Shea, Weisbach — 20 pages; dissent: Bern — 5 pages. (4)

Student advisors — engaged in "teaching" and falling within bargaining unit; grievance allowed. *Re York University and Graduate Assistants' Association; policy grievance*, November 27, 1980. Majority: Prichard, Greatbatch — 21 pages; dissent: Whittaker — 4 pages. (5)

**Bereavement Leave**

Vacation coinciding with bereavement — attempt to substitute bereavement leave for vacation: situation permits cancellation of vacation at short notice; grievance allowed. *Re Metropolitan Toronto, Municipality of, and Metropolitan Toronto Civic Employees Union, Local 43; Gray grievance*, January 27, 1981. Majority: Samuels, Tate — 11 pages; partial dissent: Moran — 3 pages. (6)

**Board of Arbitration**

Misrepresentation alleged — no jurisdiction to declare collective agreement void. *Re Newport Sportswear Limited and Joint Council Dress and Sportswear Union of the International Ladies' Garment Workers Union, Locals 72-199 and 192; policy grievance*, January 21, 1981. O'Shea — 36 pages. (7)\*†

**Classification**

Casual employee or student employee — both parties considering grievor to be student; grievance dismissed. *Re Frontenac County Board of Education and Canadian Union of Public Employees, Local 1480; Ewart grievance*, January 15, 1981. Simmons — 10 pages. (8)

Change in organization and job titles — not a new position requiring posting; grievance dismissed. *Re Scarborough General Hospital and Ontario Nurses' Association; policy grievance*, December 5, 1980. Majority: Palmer, Levis — 12 pages; dissent: Switzman — 1 page. (9)

Change in work — no evidence that corporation required the grievor to accept additional responsibility; grievance dismissed. *Re Canadian Broadcasting Corporation and National Association of Broadcast Employees and Technicians; Pyefinch grievance*, January 20, 1981. O'Shea — 17 pages. (10)

Higher and lower-rated job tasks performed — grievors entitled to higher pay whenever they do higher-rated job tasks and when they are assigned to lower-rated tasks by employer; grievance allowed. *Re Inter-Bake Foods Limited and American Federation of Grain Millers International Union; group grievance*, January 21, 1981. Majority: Brent, Melnitzer — 9 pages; dissent: McGowan. (11)

Higher classification claimed — employee not performing on a regular basis the work of the classification; grievance dismissed. *Re Fleet Industries and International Association of Machinists and Aerospace Workers; Klauck grievance*, January 17, 1981. Beck — 17 pages. (12)

Higher classification work performed — grievance allowed. *Re North Bay Hospital Commission (North Bay Civic Hospital) and Canadian Union of Public Employees, Local 139; Zahara grievance*, December 29, 1980. Duchesneau-McLachlan — 9 pages. (13)

Lead-hand position — lead-hand not a classification, merely a discretionary designation; no entitlement to return to job after lay-off; grievance dismissed. *Re LePage's Limited and Oil, Chemical and Atomic Workers International Union, Local 9-819; Ferguson grievance*, January 15, 1981. Rayner, More, Winkler — 8 pages. (14)

Lead-hand — no entitlement to higher rate unless performing additional duties; grievance allowed in part. *Re DeLaval Turbine Canada Limited and International Association of Bridge, Structural and Ornamental Iron Workers, Local 834; policy grievance*, January 20, 1981. Baum — 9 pages. (15)

Progressive training programme — company entitled to reclassify on the basis of past-performed work when a job classification is eliminated; grievance dismissed. *Re Canadian General Electric Company Limited and United Electrical, Radio and Machine Workers of America, Local 541; Young grievance*, January 6, 1981. O'Shea — 16 pages. (16)†

#### Collective Agreement

Memorandum of settlement — subsequent document containing same terms does not alter obligations under first document; subsequent conduct inconsistent with existence of agreement cannot undo agreement; preliminary objection dismissed. *Re Ottawa Citizen and Ottawa Newspaper Guild, Local 205; Tysick grievance*, November 6, 1980. Majority: Teplitsky, Rupert — 9 pages; dissent: Dinsdale — 4 pages. (17)

#### Contracting Out

Maintenance work — workers employees of maintenance contractor; grievance dismissed. *Re Silknit Limited and United Textile Workers of America; Jones grievance*, December 12, 1980. Majority: Egan, Irwin — 8 pages; dissent: Bosnich — 1 page. (18)

Related companies — no obligation on management to return previously cancelled work to unionized company; grievance dismissed. *Re Atlantis Transportation Services Inc. and Canadian Brotherhood of Railway and General Workers; union grievance*, December 17, 1980. Majority: Beck, Houck — 5 pages; did not concur: Nelson. (19)

Work performed outside plant during lay-off — past practice of contracting out; grievance dismissed. *Re Northern Telecom, Canada Limited, and United Automobile Workers, Local 27; group grievance*, January 7, 1981. Barton — 6 pages. (20)

#### Damages

Illegal hours worked by part-time employees — compensation at overtime rates appropriate. *Re Air Canada and Canadian Air Line Employees' Association; union grievance*, January 12, 1981. Weatherill — 8 pages. (21)

#### Demotion

Incapacity to perform job duties alleged — employer's evidence does not show grievor incapable of performing job duties; grievance allowed. *Re Labatt's Ontario Breweries, Division of Labatt Brewing Company Limited, and Canadian Brewery Workers Union, Local 304; Srbjanin grievance*, December 19, 1980. Beatty — 15 pages. (22)\*

Removal of teacher from headship position arising from conduct of teacher; period of demotion reduced to one academic term. *Re Board of Education for Borough of Scarborough and Ontario Secondary School Teachers' Federation, District 16; Folkes grievance*, January 5, 1981. Brandt, Sanderson, Lewis — 25 pages. (23)

Transfer to lower classification — justified where lack of work; grievances allowed in part. *Re Sasco Tubes and Roll Forming Inc. and United Steelworkers of America, Local 3950; DaSilva and DaCosta grievances*, January 27, 1981. Shime — 4 pages. (24)

#### Discharge

Absence without justification — grievor had satisfactory reason for absence; reinstatement with compensation. *Re Dominion Forge Company Limited and United Automobile Workers, Local 195; Lauko grievance*, November 3, 1980. Weatherill — 7 pages. (25)

Absence without leave — failure to supply medical evidence of illness; grievance dismissed. *Re Consolidated Fastfrate Limited and Teamsters Union, Local 938; Beaver grievance*, January 2, 1981. Majority: Brent, MacDonald — 11 pages; dissent: McRae — 1 page. (26)

Absence without notice — discharge not justified; reinstatement, without compensation. *Re Premier Concrete Products, Windsor, Ontario (Division of Lake Ontario Cement Limited), and Teamsters, Chauffeurs, Warehousemen and Helpers Union, Local 880; Gallagher grievance*, January 19, 1981. Brunner, Bartlet, Kobryn — 16 pages; addendum: Bartlet — 3 pages. (27)

Absence without notice — prior notice sufficient; grievance allowed. *Re Extendicare Limited and Service Employees Union, Local 183; Brown grievance*, December 30, 1980. Saltman — 7 pages. (28)

Absenteeism — employer meeting onus to show no reasonable expectation of improvement in attendance; grievance dismissed. *Re Salvation Army Grace Hospital and Service Employees Union, Local 210; Dishman grievance*, January 12, 1981. Majority: H.D. Brown, Burnell — 12 pages; dissent: K.W. Brown — 1 page. (29)

Absenteeism excessive — not reasonable to foresee improvement in future; grievance dismissed. *Re Chromalox Canada Inc. and United Automobile Workers; Rocafort grievance*, January 28, 1981. H.D. Brown — 10 pages. (30)

Culminating incident — record not justifying discharge; written warning substituted. *Re Burlington Carpet Mills Canada Limited and Labourers International Union of North America, Local 183; Brooks grievance*, January 6, 1981. Brent — 11 pages. (31)†

Culminating incident; failure to inform employer of lateness; grievance dismissed. *Re Lake Ontario Steel Company Limited and United Steelworkers of America, Local 6571; McLean grievance*, December 29, 1980. Palmer — 13 pages. (32)

Culminating incident; poor work record; lateness and absenteeism — grievance dismissed. *Re Carling O'Keefe Brewery of Canada Limited and Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers, Local 304; McGuire grievance*, December 30, 1980. Lederman — 11 pages. (33)

Horseplay — unauthorized use of company vehicle in an unsafe manner resulting in damage to the vehicle; grievances dismissed. *Re Lake Ontario Steel Company Limited and United Steelworkers of America, Local 6571; Szymczak and Fiedler grievances*, November 28, 1980. Shime — 6 pages. (34)

Illegal strike — leadership role; grievance dismissed. *Re Rio Algom Limited and United Steelworkers of America, Local 5417; Hallin grievance*, January 6, 1981. O'Shea — 17 pages. (35)

Imprisonment for drug offenses — company not compelled to participate in temporary absence programme; grievance dismissed. *Re Bell Canada and Communications Workers of Canada; Burkholder grievance*, December 17, 1980. Majority: Beck, Healy — 24 pages; did not concur: Walsh. (36)\*

Insubordination — grievor entitled to explicit warning regarding conduct; suspension substituted. *Re Spar Aerospace Limited and Spar Professional and Allied Technical Employees Association; Ross grievance*, November 3, 1980. Beck — 16 pages. (37)

Insubordination and abusive language — culminating incident; grievance dismissed. *Re Stelco Inc., Hilton Works, and United Steelworkers of America, Local 1005; Dickenson grievance*, December 24, 1980. Majority: Rayner, Brady — 15 pages; dissent: Bosnich — 5 pages. (38)

Insubordination; grievor refused to comply with safety rule and directed abusive language at supervisor — grievance dismissed. *Re Fabricated Plastics Limited and Sheet Metal Workers' International Association, Local 540; Ford grievance*, December 31, 1980. O'Shea, Bilewicz, Bernardo — 8 pages. (39)

Laid-off grievor not recalled — just cause not established; grievance allowed. *Re Metropolitan Toronto, Municipality of, and Canadian Union of Public Employees (Toronto Civic Employees Union), Local 43; Banting grievance*, December 18, 1980. Majority: H.D. Brown, Tate — 17 pages; dissent: Riggs — 3 pages. (40)

Neglect of duty justifying discipline — five-week suspension substituted for discharge. *Re Allen Industries Canada Limited and United Automobile Workers; Bolka grievance*, December 23, 1980. McCulloch — 13 pages. (41)

Notice for probationary employees; hours worked rendering grievor full-time employee entitled to ninety-day notice — damages in lieu since notice not mandatory condition precedent to termination. *Re Ontario Council of Regents for Colleges of Applied Arts and Technology (Fanshawe College) and Ontario Public Service Employees Union; Safran grievance*, January 21, 1981. Rayner, McGivney, Cochrane — 18 pages. (42)

Probationary employee — "just cause" to be read in context of probationary relationship; grievance dismissed. *Re Gulf Canada Limited and Oil, Chemical and Atomic Workers International Union, Local 9-593; Sterling grievance*, January 9, 1981. Majority: Palmer, Storie — 20 pages; dissent: Edwards — 3 pages. (43)\*

Quit alleged — no evidence of mental incapacity of grievor on date of resignation; grievance dismissed. *Re Inco Metal Company and United Steelworkers of America, Local 6500; Carrière grievance*, January 29, 1981. Majority: Gorsky, McNaughton — 13 pages; dissent: Gilchrist. (44)

Quit alleged — outburst a result of frustration and did not signify true and continuing intention to resign; grievance allowed. *Re Charles Wilson Limited and Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers; worker grievance*, January 23, 1981. Majority: Betcherman, Green — 9 pages; dissent: Hassell — 1 page. (45)\*

Theft and sale of employer's scrap — thirty-two month suspension and payment of monies received from scheme to employer; grievance allowed in part. *Re Consumers Glass Company Limited and United Glass and Ceramic Workers of North America, Local 200; Marchese grievance*, January 9, 1981. Majority: Beatty, Ortlieb — 11 pages; dissent: Agostinelli — 2 pages. (46)

Theft of company property — not a borrowing; grievance dismissed. *Re Union Carbide Limited and Energy and Chemical Workers Union, Local 9-593; Briggs grievance*, January 9, 1981. Majority: Palmer, Shields — 9 pages; dissent: Edwards — 2 pages. (47)

#### Discipline

Absence from work station; horseplay — progressive discipline applicable; three-day suspension reduced to one-day suspension. *Re Bell Canada and Communications Workers of Canada; Dobie and Railey grievances*, January 19, 1981. M.G. Picher, Churchill-Smith, Walsh — 12 pages. (48)

Aggressive behaviour toward foreman — two-day suspension; grievance denied. *Re Sasco Tubes and Roll Forming Inc. and United Steelworkers of America, Local 3950; Andrade grievance*, January 27, 1981. Shime — 4 pages. (49)

Carelessness — employer took incidents cancelled from disciplinary record into account; discipline in similar incidents with other employees not as severe; suspension reduced. *Re Rockwell International of Canada Limited, Plastics Division, and United Steelworkers of America, Local 3209; Higgs grievance*, January 9, 1981. Simmons — 8 pages. (50)

Carelessness — failure to follow proper procedures; damage to employer's property resulted; grievance dismissed. *Re Pamour Porcupine Mines, Limited, and United Steelworkers of America; Cardinal grievance*, January 14, 1981. O'Shea — 18 pages. (51)

Criminal charges pending — concern for safety of employees; indefinite suspension appropriate; grievance dismissed. *Re Canadian Timken, Limited, and United Steelworkers of America; Guilbault grievance*, December 16, 1980. Rayner — 16 pages. (52)

Failure to complete assigned task — not shown to have failed to have given a fair day's work; grievance allowed. *Re City of Toronto, Corporation of, and Metropolitan Toronto Civic Employees' Union, Local 43; Perkins grievance*, December 26, 1980. Majority: McCulloch, Tate — 13 pages; dissent: Milks — 4 pages. (53)

Leaving assigned work area — repeated offence; grievance dismissed. *Re Stelco, Inc., Hilton Works, and United Steelworkers of America, Local 1005; Belliveau grievance*, January 21, 1981. Majority: Rayner, Morley — 10 pages; dissent: Elder. (54)

Leaving early without employer's permission — written warning to be modified to indicate special circumstances. *Re Stelco, Inc., and United Steelworkers of America, Local 1005; Harris grievance*, January 19, 1981. Brent — 12 pages; dissent: Elder — 1 page; dissent: Dunsmore — 2 pages. (55)

Negligence: failure to ensure path clear before moving heavy equipment — one-day suspension appropriate; grievance dismissed. *Re Stelco, Inc., Hilton Works, and United Steelworkers of America, Local 1005; LeBlanc grievance*, December 12, 1980. Majority: Rayner, Baker — 8 pages; dissent: Morgan. (56)

Personal appearance rule — rule prohibiting beards reasonable; grievance dismissed. *Re Burns Meats Limited and Canadian Food and Allied Workers; Christensen grievance*, January 12, 1981. Majority: H.D. Brown, Dinsdale — 12 pages; did not concur: Chertkoff — 2 pages. (57)

Personality clash resulting in transfer — transfer disciplinary since some blame placed on grievor: transfer not unjust; grievance dismissed. *Re Windsor Western Hospital Centre Inc. (I.O.D.E. Unit) and Ontario Nurses' Association; MacLean grievance*, January 9, 1981. Barton — 18 pages. (58)†

Refusal to carry out assigned task — suspension for balance of shift appropriate; grievance dismissed. *Re Toronto Western Hospital and Canadian Union of Public Employees, Local 1744; Prasad grievance*, December 30, 1980.

Weatherill — 9 pages. (59)†

Refusal to work in unsafe conditions — conditions merely unpleasant; grievance dismissed. *Re Eastern Steelcasting and United Steelworkers of America, Local 8794; Fortin and Parent grievance*, January 14, 1981. Adell — 20 pages. (60)\*

Safety violations alleged — management partially responsible — suspension reduced from five to three days. *Re Canadian Industries Limited and United Steelworkers of America, Local 6350; Paradis and Peacock grievance*, January 13, 1981. Gorsky, Churchill-Smith, Leore — 13 pages; addendum: Leore — 1 page. (61)

Theft — suspension upheld. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 579; Whalen grievance*, January 19, 1981. Majority: Hinnegan, White — 6 pages; dissent: Prudhomme. (62)

Unsatisfactory work performance — culminating incident; grievance dismissed. *Re Nacan Products Limited and Oil, Chemical and Atomic Workers International Union, Local 9-819; Darrell grievance*, January 21, 1981. Majority: Palmer, Healy — 8 pages; dissent: Dawe. (63)

Violation of safety procedures — grievor did not use common sense in unsafe job performance but employer had not properly instructed grievor as to safety procedures; suspension reduced. *Re Kaiser Aluminum and Chemical of Canada Limited and United Steelworkers of America, Local 4885; McCarthy grievance*, January 1, 1981. Majority: McLaren, Baldwin — 12 pages; dissent: Martin. (64)

Work performance unsatisfactory — incident established; grievance dismissed. *Re Toronto General Hospital and Canadian Union of Public Employees, Local 2001; Guagliardi grievance*, January 28, 1981. Majority: H.D. Brown, Reeve — 13 pages; dissent: Messenger. (65)

Work performance unsatisfactory; refusal to obey orders — five-day suspension reasonable; grievance dismissed. *Re Holiday Inn of Toronto and Hotel and Club Employees' Union, Local 299; Plummer grievance*, January 8, 1981. Majority: Linden, Binning — 10 pages; dissent: Tate — 4 pages. (66)

#### Employment Status

Termination: grievor not returning from sick leave when expected due to continuing illness — absence for illness does not require employer's authorization; grievance allowed. *Re Sudbury Algoma Sanatorium Association and Ontario Nurses' Association, Local 28; Rothe grievance*, September 30, 1980. Majority: Teplitsky — 6 pages; Switzman — 1 page; dissent: Shirley. (67)

#### Evidence

Extrinsic evidence concerning ratification of collective agreement — suggestion of implied "other agreement": no ambiguity; evidence not admissible. *Re Molson's Brewery (Ontario) Limited and Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers, Local 306; policy grievance*, January 9, 1981. Weatherill — 8 pages. (68)

Medical evidence — *The Evidence Act* procedures not applicable; hearing adjourned. *Re Atlas Steels and Canadian Steelworkers Union, Atlas Division; Roy grievance*, November 24, 1980. Weatherill — 4 pages. (69)

#### Grievance Procedure

Duty to clearly state remedy sought — award recommending compensation. *Re Pembroke General Hospital and Canadian Union of Public Employees, Local 1502; Godin, Prince grievances*, November 25, 1980. Abbott, Maguire, Kearney — 6 pages. (70)

Timeliness — constructive knowledge of the incident not imparted to grievor; grievance arbitrable. *Re Electrohome Limited and International Brotherhood of Electrical Workers, Local 2345; McKenzie grievance*, January 21, 1981. Devlin — 15 pages. (71)†

Timeliness — extension of time limits permitted under s. 37a arbitration. *Re Thunder Bay, Corporation of City of, and Canadian Union of Public Employees, Local 87; Copeland grievance*, December 15, 1980. S.B. Scott — 30 pages. (72)†

**Timeliness** — extension under section 37(5a) of *The Labour Relations Act* granted; grievance allowed. *Re Council of Printing Industries of Canada on behalf of Photo Engravers and Electrotypers Limited and Toronto Printing Pressmen and Assistants Union, No. 10; Brar grievance*, January 22, 1981. Little — 19 pages. (73)\*†

#### Holiday Pay

Qualifying days — no scheduled days worked after paid holiday date and before termination date; grievance dismissed. *Re Bestview Holdings Limited and Bestview Services Limited and Christian Labour Association of Canada; Carter grievance*, January 5, 1981. Saltman — 8 pages. (74)†

#### Hours of Work

Guarantee of forty hours work — time worked before regular starting time to be counted; grievance dismissed. *Re Canteen of Canada Limited and Retail, Wholesale and Department Store Union, Local 414; Pannicia grievance*, January 16, 1981. Majority: Weatherill, Nielsen — 8 pages; dissent: Spaxman — 2 pages. (75)

Rest periods provided at end of shift rather than at mid-point — company complied with agreement; grievance dismissed. *Re Ontario Hydro and Industrial Brotherhood of Electrical Workers, Local 1788; union grievance*, January 12, 1981. Majority: H.D. Brown, Beresford — 10 pages; dissent: Majesky — 2 pages. (76)

#### Illness

Adequate notice of intention to return to work — employer to compensate grievor for lost earnings; grievance allowed. *Re Chromasco Limited and United Steelworkers of America, Local 4632; Murphy grievance*, January 16, 1981. Abbott — 17 pages. (77)

#### Job Posting

Restrictions — provision requiring that grievor work one year before transferring jobs applicable only to handicapped workers; grievance allowed. *Re Dominion Textile Inc. and United Textile Workers of America, Local 469; Woods grievance*, December 17, 1980. D.W. Scott, Bosnich, Dobbyn — 7 pages. (78)

Temporary vacancy — not "practical" to consider employees outside department; grievance dismissed. *Re Union Carbide Limited and United Electrical, Radio and Machine Workers of America, Local 523; Dutcher grievance*, December 15, 1980. Majority: Weatherill, Orsini — 7 pages; dissent: Bosnich — 2 pages. (79)

#### Lay-off

Bumping rights — possible to give effect to bumping rights; grievance allowed. *Re Reflex Division, International Tool (1973) Limited, and United Automobile Workers, Local 89; Simone grievance*, December 18, 1980. Palmer — 9 pages. (80)

**Existence:** employees sent home for part of shift — bumping rights to apply because relatively simple to do so; grievances allowed. *Re Brendan Construction Limited and United Steelworkers of America, Local 7578; Ouellette and Vaillancourt grievances*, December 23, 1980. Palmer — 8 pages. (81)\*

Insufficient work for position — inadequately skilled grievor originally misclassified; grievance dismissed. *Re Oakridge Villa Nursing Home and Service Employees Union, Local 204; Colaluca grievance*, January 28, 1981. Majority: Kennedy, McCormack — 10 pages; dissent: Maddison. (82)

Reinstatement of discharged employee; less senior employee rather than incumbent bumped — seniority appropriate; grievance dismissed. *Re Quaker Oats Company of Canada Limited and United Food and Commercial Workers, Local 1172-1; union grievance*, January 12, 1981. Bernstein — 6 pages. (83)†

#### Management Rights

Locker inspection — physical search of personal effects improper; management apology resolving grievance. *Re University Hospital and London and District Service Workers' Union, Local 220; policy grievance*, January 15, 1981. Majority: P.C. Picher, Filion — 15 pages; dissent: Switzman — 2 pages. (84)\*

#### Overtime

Appropriate remedy — remedy not to penalize employer for *bona fide* mistake but must compensate grievor: grievor to be paid for overtime lost; grievance allowed. *Re Kitchens of Sara Lee, Canada, Division of Consolidated Foods Corporation of Canada, Limited, and Retail, Wholesale, Bakery and Confectionery Workers Union, Local 461; Magdic grievance*, January 22, 1981. Kennedy — 6 pages. (85)

Distribution — offer of overtime not clearly made; grievance allowed. *Re Falconbridge Nickel Mines Limited and Sudbury Mine, Mill and Smelter Workers' Union, Local 598; Furtado grievance*, January 20, 1981. Weatherill — 8 pages. (86)

Entitlement — job assigned only because employee already available at work to perform job; grievance dismissed. *Re C.I.L. Inc. and United Steelworkers of America, Local 14074; Clare grievance*, November 18, 1980. Majority: Weatherill, Healy — 7 pages; dissent: Brooks. (87)

Entitlement — overtime given to foreman: supervisory duties performed those of foreman, not of grievor; grievance dismissed. *Re Newman Steel Limited and United Steelworkers of America; Leone grievance*, December 29, 1980. Rayner — 8 pages. (88)

Entitlement — overtime work given to part-time student employees contrary to collective agreement; grievances allowed. *Re North American Steel Equipment Company Limited and United Steelworkers of America, Local 6662; Benns, Stacey grievances*, January 19, 1981. Weatherill — 9 pages. (89)

Entitlement: employees outside classification used on shift — refusal by grievors to work particular shift entitled company to look elsewhere for manpower; grievances dismissed. *Re Union Carbide Canada Limited and United Electrical, Radio and Machine Workers of America, Local 523; Siba and Radobinko grievances*, January 19, 1981. Majority: H.D. Brown, Orsini — 12 pages; dissent: Bosnich. (90)

Travel time arising from attendance at safety seminar — agreement silent on payment for time; grievance dismissed. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 414; Gifford grievance*, January 9, 1981. Majority: Hinnegan, Sargeant — 5 pages; dissent: Dahmer — 2 pages. (91)

#### Overtime Pay

Part-time employee — hiring date applicable to overtime rate is date of hiring into part-time unit; grievance dismissed. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 579; Soroko grievance*, December 30, 1980. Majority: Egan, White — 5 pages; dissent: Prudhomme. (92)

#### Pensions

Date of eligibility — eligibility for employer subsidy from date of hiring refers to date as adjusted by Board of Ontario Municipal Employees Retirement System; grievance dismissed. *Re Hydro-Electric Commission of City of Sarnia and International Brotherhood of Electrical Workers, Local 1802; policy grievance*, January 6, 1981. Rayner, Millman, Wacheski — 9 pages. (93)

#### Premium Pay

Holiday work — entitlement to both premium pay and holiday pay; grievance allowed. *Re Halton, Municipality of, and Canadian Union of Operating Engineers and General Workers; policy grievance*, January 14, 1981. O'Shea — 14 pages. (94)†

Entitlement to holiday premium — work not on actual holiday but on designated holiday day, drawing premium; grievances allowed. *Re Metropolitan Toronto, Municipality of, and Metropolitan Toronto Civic Employees Union, Local 43; Manning, Partridge grievances*, December 22, 1980. Linden, Murray, Tate — 9 pages. (95)

Multiple call-outs — employer not bound by past practice; grievance dismissed. *Re Sudbury, Regional Municipality of, and Canadian Union of Public Employees, Local 6; Sullivan grievance*, January 27, 1981. Majority: Kennedy, Noble — 11 pages; dissent: Patterson. (96)

#### Probationary Employees

Access to grievance procedure: probationary employees not excluded from grievance procedure. *Re Metropolitan Toronto, Municipality of, and Canadian Union of Public Employees (Toronto Civic Employees Union), Local 43; Banting grievance*. See (40), *supra*. (97)

Arbitrability of discharge — general assumption that discharge not arbitrable. *Re Gulf Canada Limited and Oil, Chemical and Atomic Workers International Union, Local 9-593; Sterling grievance*. See (43), *supra*. (98)

#### Procedure

Concurrent application before Ontario Labour Relations Board — adjournment not appropriate. *Re York University and Graduate Assistants' Association; policy grievance*, May 16, 1980. Prichard, Whittaker, Greatbatch — 7 pages. See (5), *supra*. (99)

#### Promotion

Lower-paid job — not a promotion; failure to transfer not discriminatory; grievance dismissed. *Re Sydenham District Hospital and Service Employees Union, Local 210; Muxlow grievance*, January 22, 1981. Welling, Lanigan, Brown — 10 pages. (100)

Qualification — grievor lacking qualification in group and trade as required by collective agreement; grievor's seniority not dispositive; grievance dismissed. *Re Quebec North Shore and Labrador Railway Company and Brotherhood of Railroad Signalmen, Local 217; Vignola grievance*, January 6, 1981. Majority: O'Shea, Lemieux — 17 pages; dissent: Abbott. (101)

Qualifications — not established; grievance dismissed. *Re Windsor Western Hospital Centre Inc. and Service Employees Union, Local 210; Zahorouski grievance*, January 28, 1981. Majority: H.D. Brown, Bartlet — 12 pages; dissent: Brown. (102)

Return to former job after training period — contrary to collective agreement; employer not using correct criteria for decision; grievor unaware position in jeopardy; grievance allowed. *Re Thunder Bay, Corporation of City of, and Canadian Union of Public Employees, Local 87; Copeland grievance*. See (72), *supra*. (103)†

#### Redundancy

Lateral transfer within job classification — vacancy procedure not applicable; grievances dismissed. *Re Board of Education for City of Toronto and Canadian Union of Public Employees, Local 134; Hill, McKeigue and Wright grievances*, January 26, 1981. Ellis — 14 pages. (104)†

#### Scheduling of Work

Change in shift rotation — employer had cause, but failure to notify union was violation of collective agreement; grievance partially allowed. *Re Northern Telecom Canada Limited and United Automobile Workers, Local 1915; union grievance*, January 15, 1981. Saltman — 6 pages. (105)

Change to rotating shifts — collective agreement silent: past practice considered only where ambiguity in collective agreement; grievance dismissed. *Re Kitchens of Sara Lee, Canada, Division of Consolidated Foods Corporation of Canada, Limited, and Retail, Wholesale, Bakery and Confectionery Workers Union, Local 461; group grievance*, January 22, 1981. Kennedy — 6 pages. (106)

Part-time work — senior employee entitled to preference, where there is a choice, up to twenty-four hours per week; grievance allowed. *Re Bonimart Foods, Sudbury, and Retail, Wholesale and Department Store Union, Local 579; union grievance*, November 24, 1980. Weatherill — 9 pages. (107)

Two crews assigned to work three-shift schedule — no obligation to use three crews; grievance dismissed. *Re International Harvester Canada Limited and United Steelworkers of America, Local 2868; policy grievance*, January 21, 1981. Egan — 8 pages. (108)†

#### **Seniority**

Calculation: break in employment greater than two years interrupting seniority — employment as occasional teacher not relevant; grievance denied. *Re Board of Education for City of Windsor and Ontario Secondary School Teachers' Federation, District 1; Basinski grievance*, December 30, 1980. Hinnegan, Bartlet, Halliwill — 9 pages. (109)

Calculation — not affected by withdrawn resignation where employer allowed grievor to withdraw resignation; grievance allowed. *Re Parry Sound District General Hospital and Ontario Nurses' Association; Belanger grievance*, January 7, 1981. Majority: Saltman, Beaulieu — 8 pages; dissent: O'Byrne — 7 pages. (110)

Calculation for part-time teachers — based on most recent date of employment rather than hours actually worked; grievance allowed. *Re Carleton Board of Education and Teachers' Federation of Carleton; employer grievance*, December 15, 1980. Majority: O'Shea, Joyce — 19 pages; dissent: Nelligan — 7 pages. (111)

#### **Sick Leave**

Calculation of "years of service" — based on length of service and not actual years of work; grievance allowed. *Re Bestview Holdings Limited and Bestview Services Limited and Christian Labour Association of Canada; Carter grievance*. See (74), *supra*. (112)†

#### **Sick Pay**

Waiting period — only waived where repeated absences for same illness; grievances dismissed. *Re TAS Communications Services and Communications Workers of Canada; Tuncott, Passmore grievances*, January 12, 1981. Adams — 10 pages. (113)

#### **Termination Leave**

Collective agreement offering choice of teaching or leave in final year — six-month leave implies work remainder of year; grievance allowed. *Re York University, Board of Governors of, and York University Faculty Association; Issajenko grievance*, December 5, 1980. Majority: Teplitsky, Morse — 10 pages; dissent: Wakely — 7 pages. (114)

#### **Transfer**

Disciplinary in nature — just cause not established; grievance allowed. *Re Stelco, Inc., Hilton Works, and Local 1005, United Steelworkers of America; Barich grievance*, January 22, 1981. Majority: Brent, Marshall — 12 pages; dissent: Drmaj — 3 pages. (115)\*

Review by arbitration board — transfer not discipline or demotion; transfer not subject to review under collective agreement; grievance dismissed. *Re Hamilton-Wentworth Roman Catholic Separate School Board and Branch Affiliates of Ontario English Catholic Teachers' Association and L'Association des Enseignants Franco-Ontariens; Pentilchuk grievance*, January 27, 1981. Majority: Kennedy, Whelan — 13 pages; dissent: Nelson — 4 pages. (116)

Right to return to former job — no right per collective agreement to reclaim previous position by temporary transfer whenever work performed there; grievance dismissed. *Re True Temper Canada Limited and United Steelworkers of America, Local 2853; union grievance*, January 7, 1981.

Senior employee transferred — not established that grievor more qualified; grievance dismissed. *Re St. Catharines General Hospital and Ontario Nurses' Association; Storey grievance*, November 19, 1980. Brunner, Dixon, Walsh — 13 pages. (118)

#### **Vacations**

Entitlement where interrupted employment: entitlement based only on most recent employment; grievances dismissed. *Re Longyear Canada Inc. and International Association of Machinists and Aerospace Workers, Local 2412; Peterson, Liberty grievances*, December 22, 1980. Linden — 5 pages. (119)

#### **Wages**

Calculation of daily pay rates for payments to salaried workers on termination — days worked as proportion of normal work year; grievance allowed in part. *Re London, Corporation of City of, and London Fire Fighters' Association, Local 142; union grievance*, January 19, 1981. Shime — 8 pages. (120)

Deduction for alleged unauthorized absence — refusal to cross picket line; grievor did a full day's work with authorization from supervisors; grievance allowed with compensation. *Re Public Service Alliance of Canada and Alliance Employees Union; Dupont grievance*, January 13, 1981. Roach — 10 pages. (121)

Education allowance — not sufficient evidence to establish grievor possessed special skills; grievance dismissed. *Re Sudbury Memorial Hospital and Ontario Nurses' Association; Ryan grievance*, January 13, 1981. Majority: Lunney, Buckland — 35 pages; dissent: Switzman. (122)

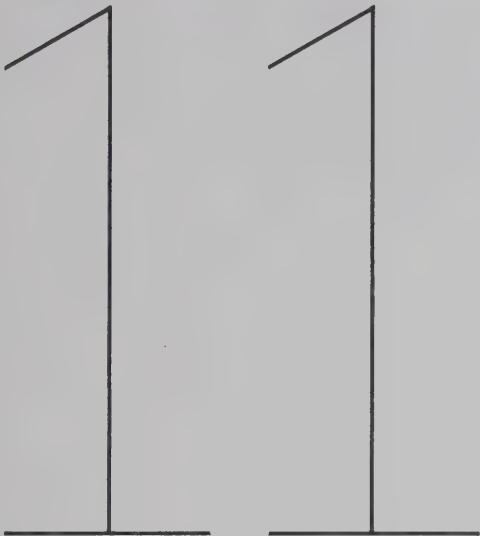
Incentive pay entitlement where temporary transfer — grievor transferred due to lack of work at regular position; not entitled to incentive pay at regular position rate under collective agreement; grievance dismissed. *Re Gates Rubber of Canada Limited and United Rubber, Cork, Linoleum and Plastic Workers of America, Local 733; Dewberry grievance*, November 10, 1980. Weatherill — 9 pages. (123)

Incentive rates altered — negotiation of details required; grievance allowed. *Re ESB Canada Limited and International Union of Electrical, Radio and Machine Workers, Local 512; union grievance*, December 23, 1980. Majority: Brunner, Aslin — 11 pages; dissent: Morley — 2 pages. (124)

Minimum pay; changeover work before performance not paid as separate work for minimum period — consistent with collective agreement; grievance dismissed. *Re National Arts Centre Corporation and International Alliance of Theatrical Stage Employees, Local 471; union grievance*, November 4, 1980. Majority: Weatherill, Laishley — 8 pages; dissent: Wright — 3 pages. (125)

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# Monthly Bulletin



Ontario Ministry of Labour



Hon. Robert Elgie, M.D., Minister  
T.E. Armstrong, QC, Deputy Minister

Office of Arbitration  
400 University Avenue, 6th Floor  
Toronto, Ontario  
M7A 1T7  
Tel. (416) 965-5669

Miss Jean M. Read, Director

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Office of Arbitration as a service to  
persons involved in labour-management  
arbitrations.

## Appointment of Arbitrators

Forms for requests for appointment of arbitrator under section 37a of *The Labour Relations Act* are available on request, from the Office of Arbitration.

## Change of Address and Telephone Number

The following changes should be noted, effective immediately:  
Mr. T.C. O'Connor, Suite 301, 85 Bloor Street East,  
Toronto, Ontario, M4W 1A9; telephone (416) 967-1144  
(unchanged).

Dr. Lita-Rose Betcherman; telephone (416) 773-4860.

## Awards

The following awards were filed with the Office of Arbitration during the month of March, 1981.

The summary was prepared at the Faculty of Law, Queen's University, under the supervision of C.G. Simmons, B.A., B.C.L., LL.M.; D.D. Carter, B.A., B.C.L., LL.B. and K.P. Swan, P.Eng., LL.B.

\* Indicates award to be reported in full or in part in *Labour Arbitration Cases*.

† Indicates award issued under section 37a of *The Labour Relations Act*.

## Arbitrability

Grievance arising prior to commencement of first collective agreement — grievance not arbitrable. *Re Hanover and District Hospital and London and District Service Workers' Union, Local 220; Spitzig grievance*, March 9, 1981. Gorsky, Reistetter, Switzman — 10 pages; addendum: Switzman — 1 page. (1)

**Bargaining Unit**

Staff educator part of bargaining unit — grievance allowed. *Re Sudbury and Algoma Sanatorium Association, Board of Directors of, and Ontario Nurses' Association, Local 28; union grievance*, March 4, 1981. Majority: H.D. Brown, Mayne — 13 pages; dissent: Buckland — 4 pages. (2)

**Bereavement Leave**

Requirement to make up work missed while on leave — right to leave does not release from contractual obligations; grievance dismissed. *Re Fanshawe College of Applied Arts and Technology and Ontario Public Service Employees Union; Velanoff grievance*, March 3, 1981. Brandt, McGivney, Cochrane — 21 pages. (3)

**Classification**

Higher classification claimed — not established; grievance dismissed. *Re Borough of Scarborough, Corporation of, and Scarborough Professional Fire Fighters' Association, Local 626; policy grievance*, March 12, 1981. Brent — 13 pages. (4)

Higher classification work performed — higher wage rate effective at time grievor began performing duties of higher classification; grievance allowed. *Re G.S.W. Inc. (GSW Building Products, Barrie) and United Electrical, Radio and Machine Workers of America, Local 542; Cripps grievance*, March 20, 1981. Black — 8 pages. (5)

Rate of higher classification claimed based on similar job duties — not enough to form central core of higher rated classification; grievance dismissed. *Re Board of Education for City of Windsor and Canadian Union of Public Employees, Local 27; Thomas grievance*, March 16, 1981. Barton — 10 pages. (6)†

**Collective Agreement**

Acceptance by conduct alleged — not constituting ratification; grievance dismissed. *Re Dayton-Walther Canada Limited and United Steelworkers of America, Local 4656; policy grievance*, February 25, 1981. Beck — 28 pages. (7)

**Contracting Out**

Avoidance of hiring full-time employees prohibited — limited contracting out permitted; grievance dismissed. *Re Ontario Educational Communications Authority and National Association of Broadcast Employees and Technicians; policy grievance*, February 20, 1981. Brandt — 13 pages. (8)

Lay-off — nature of work would not prolong lay-off; grievance dismissed. *Re Canadian Appliance Manufacturing Company Limited and United Steelworkers of America, Local 3129; union grievance*, February 26, 1981. Linden — 7 pages. (9)

Janitorial services — contracting out not prohibited by the collective agreement; grievance dismissed. *Re Vulcan Industrial Packaging Limited and United Steelworkers of America, Local 6754; policy grievance*, March 25, 1981. Kennedy, Ricci, Muselius — 6 pages. (10)

Janitorial work contracted out — not barred by collective agreement; grievance dismissed. *Re Ford Motor Company of Canada Limited and United Automobile Workers, Local 200; union grievance*, February 6, 1981. Palmer — 9 pages. (11)

Overtime work sub-contracted — collective agreement required only that regular work be provided; grievance dismissed. *Re Northern Telecom Canada Limited and United Automobile Workers, Local 27; Cebulski grievance*, March 19, 1981. Willes — 8 pages. (12)

**Damages**

Claim for benefits upon reinstatement — grievor not entitled to benefits he was not receiving at date of termination; grievance dismissed. *Re Durham College and Ontario Public Service Employees Union; Preston grievance*, March 5, 1981. Majority: H.D. Brown, Hubert — 11 pages; dissent: Beaulieu — 1 page. (13)

Interest sought on damages awarded — a remedial request properly before arbitrator: when no collective agreement to contrary jurisdiction in arbitrator to award interest; grievance allowed. *Re Air Canada and Canadian Air Line Employees' Association; Rancourt grievance*, March 24, 1981. P.C. Picher — 34 pages. (14)\*

Reinstatement and damages awarded — grievor did not return: remedies independent; entitled to damages; grievance allowed. *Re Firestone Canada Ltd. and United Rubber, Cork, Linoleum and Plastic Workers of America, Local 113; Morris grievance*, March 6, 1981. Brunner, Furlong, Switzman — 7 pages. (15)\*

**Demotion**

Return to original position after trial period — employer acted reasonably and fairly; grievance dismissed. *Re Borough of East York, Corporation of, and Canadian Union of Public Employees, Local 114; Cugini grievance*, March 12, 1981. Black — 14 pages. (16)

**Discharge**

Absence for three consecutive days without notice — in the circumstances not possible to notify company; grievance allowed. *Re Molson's Brewery (Ontario) Limited and Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers, Local 304; Scarcello grievance*, February 13, 1981. Weatherill — 11 pages. (17)

Absence of more than three working days — medical certificates not satisfactory; grievance denied. *Re Hayes-Dana Inc. and United Automobile Workers, Local 676; Carbone grievance*, March 16, 1981. O'Shea — 19 pages. (18)

Absence without leave — grievor leaving his duties after an argument with his supervisor; six-month suspension substituted. *Re Toronto Transit Commission and Amalgamated Transit Union, Local 113; Osborne grievance*, March 20, 1981. Majority: Barton, Beaulieu — 11 pages; partial dissent: Perron — 1 page. (19)

Absenteeism — excessive innocent absenteeism: grievor not previously warned; grievance allowed. *Re Falconbridge Nickel Mines Limited and Sudbury Mine, Mill and Smelter Workers' Union, Local 598; Clouthier grievance*, February 26, 1981. Linden, Valin, McIntyre — 8 pages. (20)

Absenteeism and lateness — reinstatement without compensation. *Re Consolidated-Bathurst Packaging Limited and International Woodworkers of America, Local 2-76; Bossence grievance*, February 17, 1981. Majority: Curtis, Rogers — 15 pages; dissent: Millard — 23 pages. (21)

Absenteeism due to allergic reaction — no clear connecting factor between reaction and employment; grievance allowed. *Re Shopsy's Food Limited and Canadian Food and Allied Workers Union; DiPucchio grievance*, January 31, 1981. Rayner, Simon, Sargeant — 15 pages. (22)

Assault on sub-foreman — just cause for discharge; grievance dismissed. *Re Domglas Inc. and United Glass and Ceramic Workers of North America; Ferguson grievance*, March 11, 1981. O'Connor — 7 pages. (23)†

Conduct injurious to relationship between company and its customers — grievance dismissed. *Re Reliable Builders' Supplies and Teamsters Local 230; Marchese grievance*, March 12, 1981. Majority: Barton, Phelps — 8 pages; dissent: Beaulieu — 1 page. (24)

Culminating incident — employer gave grievor opportunity to reconsider; grievor's reversal before discharge precluding treatment as culminating incident; grievance allowed. *Re T.D.L. Woodtreating Limited and Canadian Union of Operating Engineers and General Workers, Local 101; Bradley grievance*, March 18, 1981. Egan — 6 pages. (25)†

Culminating incident — unjustified absence plus bad attendance record sufficient for discharge. *Re Goderich Tube and Steel Co. (Canada) Limited and United Automobile Workers, Local 1090; Flood grievance*, March 25, 1981. Curtis — 7 pages. (26)

Drinking alcoholic beverages while on duty — progressive discipline applied; grievance dismissed. *Re Koch Transport Limited and Brewery Workers Local Union 173 and Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America; Clark grievance*, February 26, 1981. Majority: H.D. Brown, Boehmer — 14 pages; dissent: Turner. (27)

Failure to report accident — change of attitude; suspension substituted. *Re Air Canada and International Association of Machinists and Aerospace Workers, District Lodge 148; Jones grievance*, March 17, 1981. Brunner — 11 pages. (28)

Horseplay — no evidence of malice; reinstatement without compensation. *Re Cecutti's Bakery Limited and Retail, Wholesale and Department Store Union; Amsel grievance*, March 10, 1981. Teplitsky — 4 pages. (29)

Insubordination and poor workmanship — unauthorized personal work and faulty production: no flagrant challenge to authority; grievor not proved solely responsible for errors; suspension substituted. *Re Georgian College and Ontario Public Service Employees Union; Haskim grievance*, March 3, 1981. Majority: Brandt, Switzman — 28 pages; dissent: Correll — 4 pages. (30)

Loss of seniority — grievor reverting to probationary employee; grievance dismissed. *Re Gates Rubber of Canada Limited and United Rubber, Cork, Linoleum and Plastic Workers of America, Local 733; Diakun grievance*, March 7, 1981. Majority: Brandt, Gray — 15 pages; dissent: Hoover — 2 pages. (31)\*

Manic depressive illness — medical evidence showing good progress; reinstatement if established that grievor's condition satisfying regulations under *The Nursing Homes Act*. *Re Unger Nursing Home Limited and Christian Labour Association of Canada; Glasser grievance*, February 18, 1981. O'Shea, Mustard, Adema — 18 pages. (32)

Patient abuse — patient injured when dentures forcibly removed; grievor acted negligently not wilfully; grievor reinstated without compensation. *Re Parkwood Hospital and London and District Service Workers' Union, Local 220; Joseph grievance*, February 18, 1981. Majority: R.J. Roberts, McIntyre — 11 pages; dissent: Heffernan — 1 page; addendum: McIntyre — 1 page. (33)

Possession of employer's stolen property — dismissal of criminal charge not relevant: grounds for discharge; reinstatement conditional upon satisfactory explanation. *Re Calvert of Canada Limited and United Automobile Workers, Local 2098; Renaud grievance*, February 9, 1981. Weatherill — 7 pages. (34)

Probationary employee — right to grieve discharge; grievance allowed. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 414; Pasquino grievance*, February 17, 1981. Majority: Brunner, Dahmer — 14 pages; dissent: Sargeant — 5 pages. (35)\*

Procedures — failure to comply with mandatory collective agreement provision requiring presence of steward when an employee is dismissed; disciplinary action void; grievance allowed. *Re Milnes Fuel Oil Ltd. and Fuel, Bus, Limousine, Petroleum Drivers and Allied Employees, Local 352; Woods grievance*, February 26, 1981. Majority: H.D. Brown, Contardi — 16 pages; dissent: Whittaker — 5 pages. (36)\*

Refusal of maternity leave — grievor did not qualify for pregnancy leave under *The Employment Standards Act*, and was terminated upon refusing alternate employment on her return to work; grievance dismissed. *Re Trent Inn Hotel (Peterborough) Ltd. and Hotel and Restaurant Employees and Bartenders Union, Local 604; Graziano grievance*, March 18, 1981. Eaton — 11 pages. (37)

Safety requirement breach — consequences of a repetition of grievor's conduct disastrous; grievance denied. *Re Consolidated Aviation Fueling and International Association of Machinists and Aerospace Workers, Local 2413; Bennett grievance*, March 25, 1981. Prichard — 14 pages. (38)

Traffic accident — grievor's performance before accident showing serious failures in judgement; grievance dismissed. *Re McKinlay Transport Limited and Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 880; Miller grievance*, March 2, 1981. Weatherill, Shelkie, Burnell — 12 pages. (39)

Unsatisfactory job performance — persistent failure to meet job standards; grievance dismissed. *Re Bell Canada and Communications Workers of Canada; Mackie grievance*, March 2, 1981. Majority: M.G. Picher, Churchill-Smith — 9 pages; dissent: Switzman. (40)

Unsatisfactory work performance — suspension would not have corrected the situation; grievance denied. *Re Conestoga College of Applied Arts and Technology and Ontario Public Service Employees' Union; Pest grievance*, February 26, 1981. Majority: H.D. Brown, Hubert — 28 pages; dissent: Cochrane. (41)

Violence and foul language towards supervisors; penalty mitigated by emotional state of grievor — reinstated one day prior to date of scheduled retirement to assist grievor in obtaining further employment. *Re Toronto Star Newspapers Limited and Southern Ontario Newspaper Guild; Maguire grievance*, March 9, 1981. Prichard — 15 pages. (42)

#### Discipline

Accident — suspension based in part on non-existent disciplinary record; replaced by reprimand. *Re Browning-Ferris Industries of Windsor Limited and Teamsters Local 880; Marentette grievance*, February 26, 1981. Majority: Brent, McRae — 9 pages; dissent: Kavanaugh — 4 pages. (43)

Accident with employer's vehicle — vehicle below standard: driver error not significant cause of accident; grievance allowed. *Re Hamilton Street Railway Company and Amalgamated Transit Union, Local 107; Purnell grievance*, March 31, 1981. Majority: McLaren, Bosnich — 8 pages; dissent: Billings — 2 pages. (44)

Failure to follow company practice — grievor had no prior disciplinary record; three-day suspension excessive; warning substituted with compensation. *Re Fairside Tavern, London, and Retail, Wholesale and Restaurant Employees' Union, Local 448; Harrison grievance*, March 18, 1981. Brandt — 13 pages. (45)

Failure to notify of absence prior to start of shift — suspension not unreasonable; grievance dismissed. *Re Steel Company of Canada Limited (Hilton Works) and United Steelworkers of America, Local 1005; Huffman grievance*, March 26, 1981. Majority: Adams, Brady — 11 pages; dissent: Marshall. (46)

Failure to produce a doctor's certificate for absence — not established on the facts; grievance allowed. *Re National Steel Car Corporation and United Steelworkers of America, Local 7135; Gall grievance*, March 9, 1981. Punnett — 6 pages. (47)†

Failure to punch in — found to be disciplinable as insubordination; deduction of wages also appropriate. *Re Ford Motor Company of Canada Limited and United Automobile Workers, Local 1520; union grievance*, March 6, 1981. Palmer — 11 pages. (48)

Failure to report to work — adequate explanation not provided; grievance dismissed. *Re Dow Chemical of Canada Limited — Arrow Road, and Printing Specialities and Paper Products Union, Local 466; Duchesne grievance*, March 12, 1981. Eaton — 17 pages. (49)†

Fitness for work — foreman acting too quickly; grievance allowed in part. *Re Steel Company of Canada Limited (Hilton Works) and Local 1005, United Steelworkers of America; Lord grievance*, February 25, 1981. Brunner, Brady, Marshall — 7 pages; addendum: Marshall — 1 page. (50)

Implementation of suspension delayed — not unreasonable or inequitable. *Re Metropolitan Toronto, Municipality of, and Metropolitan Toronto Civic Employees Union, Local 43; Antelmi grievance*, March 11, 1981. Majority: Samuels, Tate — 14 pages; addendum: Tate — 2 pages; dissent: Beresford — 4 pages. (51)\*

Insubordination — grievor unwilling to admit any fault; grievance dismissed. *Re International Minerals and Chemical Corporation (Canada) Limited and United Steelworkers of America, Local 8252; Madsen grievance*, March 27, 1981. Majority: Kennedy, McGee — 9 pages; dissent: Sharp — 2 pages. (52)

Insubordination — prior disciplinary record considered; grievance dismissed. *Re Fairside Tavern, London, and Retail, Wholesale and Department Store Union, Local 448; Harrison grievance*, March 19, 1981. Brandt — 15 pages. (53)

Insubordination alleged — grievor complying within time specified by employer; grievance allowed. *Re Board of Education for City of Windsor and Canadian Union of Public Employees, Local 27; Thomas grievance*. See (6), *supra*. (54)†

Insubordination: refusal to work at premises with no washroom — order amounting to breach of regulations; grievances allowed. *Re Dominion Chain Company (Division of Welland Forge Limited) and International Association of Machinists and Aerospace Workers, Local 1927; Pilon (Swan) and McArdle grievances*, December 29, 1980. Majority: Teplitsky, Lewis — 8 pages; dissent: Dixon — 2 pages. (55)\*

Insubordination — settlement relating to application of "work-now, grieve-later" rule. *Re Wardair Canada (1975) Limited and Canadian Air Line Flight Attendants Association; Manning grievance*, March 4, 1981. Shime — 8 pages. (56)

Leaving job site without permission — company failed to establish lack of authorization to leave site during authorized break; grievance allowed. *Re Stelco Inc., Hilton Works, and United Steelworkers of America, Local 1005; Barbieri grievance*, February 27, 1981. Majority: R.J. Roberts, Marshall — 9 pages; dissent: Murray — 2 pages. (57)

Motor vehicle accident — employee did everything reasonable to prevent accident and is not held at fault; grievance allowed. *Re Oakville, Corporation of Town of, and Canadian Union of Public Employees, Local 1994; Allen grievance*, March 2, 1981. Barton — 13 pages. (58)†

Negligence resulting in one-day suspension — excellent work record; disciplinary letter may be removed from file after five months if no further acts of negligence. *Re St. Mary's Hospital, London, and London and District Service Workers' Union, Local 220; Bates grievance*, March 16, 1981. Brent, Coups, Robinson — 7 pages. (59)

Reporting to work under the influence of alcohol — misconduct fundamental; grievance dismissed. *Re Steel Company of Canada Limited (Hilton Works) and United Steelworkers of America, Local 1005; Preston grievance*, March 25, 1981. Majority: Adams, Gray — 10 pages; dissent: Davidson. (60)

Seniority to continue during suspension — suspension to be included within "years of service" for calculation of vacation pay and "service stripe pay". *Re St. Catharines, Corporation of City of, and St. Catharines Professional Fire Fighters' Association, Local 485 of International Association of Firefighters; Collins grievance*, March 12, 1981. Brunner — 4 pages. (61)

Sleeping while on duty — reduced to two-day suspension in the circumstances. *Re Metropolitan Toronto, Municipality of, and Metropolitan Toronto Civic Employees Union, Local 43; Antelmi grievance*. See (51), *supra*. (62)\*

Theft — one-month suspension not excessive; grievance dismissed. *Re International Harvester Company of Canada Limited and United Automobile Workers, Local 525; Nicol grievance*, February 23, 1981. O'Shea — 16 pages. (63)

#### Estoppel

Past practice — past practice of straight overtime should continue until terminated in some way; grievances dismissed. *Re Silverwood Dairies (Ottawa Dairy), Division of Silverwood Industries Limited, and Retail, Wholesale and Department Store Union, Local 440; Berthelet, Fleury and Fleury grievances*, March 25, 1981. Fraser — 19 pages. (64)

#### Evidence

Privilege — communications to the employer's vocational counsellor not privileged. *Re Metropolitan Toronto, Municipality of, and Metropolitan Toronto Civic Employees Union, Local 43; Cardle and Rose grievances*, February 26, 1981. Majority: Saltman, Beresford — 4 pages; dissent: Tate. (65)

#### Grievance Procedure

Classification grievance — failure to follow procedures making arbitration premature. *Re Philips Electronics Limited and International Brotherhood of Electrical Workers, Local 1590; Wilson grievance*, February 27, 1981. H.D. Brown, Bell, McCuaig — 10 pages. (66)

Timeliness — extension of time limits but employer not to be responsible for compensation for period of delay by union; grievance arbitrable. *Re Aro Canada Inc. and International Association of Machinists and Aerospace Workers; Enburgh grievance*, February 25, 1981. Majority: Shime, Switzman — 10 pages; dissent: Craig — 7 pages. (67)

#### Health and Safety

Luncheon facilities — insufficient evidence that health and safety of employees not being provided for; grievance dismissed. *Re Stelco Inc., Hilton Works, and United Steelworkers of America, Local 1005; group grievance*, March 11, 1981. Brent, Brady, Marshall — 10 pages; addendum: Brady — 1 page. (68)

#### Holiday Pay

Qualifying days; failure to report on qualifying day — no adequate explanation provided; grievance dismissed. *Re Dow Chemical of Canada Limited — Arrow Road, and Printing Specialties and Paper Products Union, Local 466; Duchesne grievance*. See (49), *supra*. (69)†

#### Hours of Work

Attendance at Occupational Health and Safety Committee meeting — not work for the purpose of payment; grievance dismissed. *Re Perley Hospital and Ontario Nurses' Association; Compton grievance*, March 12, 1981. Majority: Barton, Pike — 8 pages; dissent: Switzman. (70)\*

Flexible work schedule — grievor performing scheduled day's work even though refusing to cross picket line; grievance allowed. *Re Public Service Alliance of Canada and Alliance Employees Union; Dubé grievance*, February 19, 1981. Roach — 11 pages. (71)

#### Job Posting

Transfer without posting — posting required; grievance allowed. *Re Mississauga Hydro-Electric Commission and International Brotherhood of Electrical Workers, Local 636; Green grievance*, December 24, 1980. Majority: Teplitsky, Fisher — 4 pages; partial dissent: Gregory — 2 pages. (72)

#### Lay-off

Bumping rights — senior employee had threshold ability to perform job and entitled to trial period; grievance allowed. *Re Canadian Appliance Manufacturing Company Limited and United Steelworkers of America, Local 3129; Cormier grievance*, February 26, 1981. Linden — 7 pages. (73)

Bumping rights of regular part-time employee — casual employee must be immediately capable of performing the work which becomes available; grievance allowed in part. *Re Shaver Hospital for Chest Diseases and Ontario Nurses' Association; Densham grievance*, February 25, 1981. Shime, Dixon, Robinson — 6 pages. (74)

Lack of work not established — grievance allowed. *Re Central Park Lodges of Canada and Service Employees Union, Local 210; Horvath grievance*, January 22, 1981. Teplitsky, Stewart, Brown — 4 pages. (75)

More junior employees in higher classification retained — operations require presence of higher classification; grievance dismissed. *Re Bay Mills Limited, Bayex Division, and United Textile Workers of America, Local 329; group grievance*, March 23, 1981. Kennedy — 7 pages. (76)

Qualifications — job title for which grievor had been qualified had been substantially changed; grievance dismissed. *Re Northern Telecom Canada Limited (Brampton) and United Automobile Workers, Local 1915; Hartwick grievance*, March 19, 1981. Barton — 10 pages. (77)

Qualifications — onus on union to prove ability to do the job not discharged; grievance dismissed. *Re PPG Industries Canada Limited and Oil, Chemical and Atomic Workers International Union, Local 9-690; Rak grievance*, March 4, 1981. Majority: Palmer, Hoffman — 11 pages; dissent: Dawe. (78)

Qualifications — senior employee had requisite skill to replace junior employee; grievance allowed. *Re Brendan Construction Limited and United Steelworkers of America, Local 7578; Severin grievance*, February 25, 1981. Rayner — 5 pages. (79)

Qualifications — senior employee not having sufficient ability and qualifications; grievance dismissed. *Re Oshawa, Corporation of City of, and Canadian Union of Public Employees, Local 251; Caverly grievance*, March 6, 1981. Schiff, Noonan, Lewis — 8 pages; addendum: Lewis — 1 page. (80)

#### Overtime

Distribution — overtime must be offered to employee normally performing the work; "in kind" remedy not appropriate; grievance allowed. *Re Consolidated-Bathurst Packaging Limited (St. Thomas Division) and International Woodworkers of America, Local 2-337; Peters grievance*, March 23, 1981. Majority: Adams, Millard — 9 pages; partial dissent: Rogers. (81)

Distribution — no obligation to distribute overtime evenly; grievance denied. *Re Accurcast Die Casting Limited and International Molders and Allied Workers Union, Local 93; Rabideau grievance*, March 25, 1981. Samuels — 5 pages. (82)

Pre-authorization — overtime worked on premises by executive officers does not require authorization by superior under provision of the collective agreement; grievance allowed. *Re Canadian Council on Social Development and Canadian Union of Public Employees, Local 2059; Verzuh grievance*, February 23, 1981. Bernstein — 7 pages. (83)†

Requirement of written authorization as condition precedent to payment — inconsistent with collective agreement; grievance allowed. *Re Sudbury Nursing Homes Limited and Ontario Nurses' Association; Pichler grievance*, February 6, 1981. Majority: Brunner, Richards — 8 pages; dissent: Brisbin — 4 pages. (84)

Scheduling — company acted in good faith and according to past practice; grievance dismissed. *Re Consolidated-Bathurst Packaging Limited and International Woodworkers of America, Local 2-337; Wilson grievance*, March 12, 1981. Majority: Adams, Rogers — 9 pages; dissent: Millard. (85)

#### Pensions

Eligibility of permanently disabled employee — plan coming into effect after grievor disabled; grievance dismissed. *Re Benn Iron Foundry Limited and United Automobile Workers, Local 251; Verschoore grievance*, March 9, 1981. Brent — 14 pages. (86)

#### Premium Pay

Holiday work — insufficient notice: entitled to pay as if holiday worked; grievance allowed. *Re Air Canada and Canadian Air Line Employees' Association; group grievance*, February 20, 1981. Weatherill — 9 pages. (87)

Shift premiums considered a bonus for inconvenience — not to be paid to night and afternoon shift employees while on day shift; grievance dismissed. *Re Board of Education for City of Windsor and Canadian Union of Public Employees, Local 27; policy grievance*, March 16, 1981. Barton — 5 pages. (88)†

#### Procedure

Adjournment — new company owners not prepared to present their case; might be unfairly bound by actions of previous owners. *Re Genosha Hotel and Hotel and Restaurant Employees' and Bartenders' International Union, Local 280; Beverage Dispensers' Union; Stephen grievance*, March 10, 1981. Majority: O'Shea, Furlong — 7 pages; dissent: Wareham — 1 page. (89)

#### Promotion

Qualifications — employer must prove superior qualifications if less senior applicant promoted: onus not met; grievance allowed. *Re North York, Corporation of City of, and North York Civic Employees Union, Local 94, Canadian Union of Public Employees; Vardy grievance*, March 10, 1981. Adamson — 13 pages. (90)†

Qualifications — non-employee awarded job did not have clearly superior qualifications to those of grievor; grievance allowed. *Re Professional Institute of Public Service of Canada and Professional Institute Staff Association; Entwistle grievance*, February 23, 1981. O'Shea — 26 pages. (91)

#### Recall

Particular job classification never held by grievor — company entitled to assume grievor unable to do job; grievance dismissed. *Re Chromasco Limited and United Steelworkers of America, Local 4632; Zimmerling grievance*, February 23, 1981. O'Shea — 17 pages. (92)

#### Redundancy

Surplus employees — under collective agreement seniority governs subject to employer's requirements: senior but less qualified employees may be declared surplus; grievance dismissed. *Re Halton Board of Education and Ontario Secondary School Teachers' Federation, Halton District 9; policy grievance*, February 24, 1981. Majority: Beck, Lawless — 19 pages; dissent: Smith. (93)

#### Sabbatical Leave

Entitlement where first sabbatical delayed — credit for years of delay occasioned by needs of university; grievance allowed. *Re York University, Board of Governors of, and York University Faculty Association; Blackmore grievance*, February 24, 1981. Majority: Brent, Cowan — 13 pages; dissent: Paulin — 14 pages. (94)

#### Scheduling of Work

Shift trades — employer's blanket rule requiring eight-hour rest periods unreasonable; grievance allowed. *Re Air Canada and Canadian Airline Employees Association; Braun grievance*, February 27, 1981. Simmons — 10 pages. (95)

Supervisors removed from shift schedule — collective agreement requires equitable sharing of shifts: affected classifications not specified; grievance dismissed. *Re Etobicoke General Hospital and Ontario Public Service Employees Union, Local 566; policy grievance*, January 20, 1981. O'Connor, Drmaj, Robinson — 9 pages. (96)

#### **Seniority**

Qualifications — grievors not possessing qualifications and ability to perform jobs not included in lay-off; grievance dismissed. *Re Rockwell International of Canada Limited (Plastics Division), Gananoque, Ontario, and United Steelworkers of America, Local 3209; union grievance*, March 6, 1981. H.D. Brown — 15 pages. (97)

#### **Sick Leave**

Right to return to former job — grievor not entitled to return to former job when absent longer than six months; grievance denied. *Re Hill Refrigeration of Canada Limited and United Steelworkers of America, Local 6547; Bouchard grievance*, March 17, 1981. Carter — 9 pages. (98)

#### **Sick Pay**

Notification of absence; employee required to notify employer at least one hour before commencement of shift — timing determined by reference to employer's time clock; grievance dismissed. *Re Woodstock General Hospital Trust and London and District Service Workers' Union, Local 220; Smith grievance*, March 10, 1981. Majority: Brent, Caplan — 4 pages; dissent: Robinson — 3 pages. (99)

#### **Supplementary Unemployment Benefits**

Eligibility — grievor ineligible to receive benefits due to other part-time employment; grievance dismissed. *Re Canteen of Canada Limited (Ontario) and Retail, Wholesale and Department Store Union, Local 414; Cousineau grievance*, March 11, 1981. H.D. Brown — 9 pages. (100)

#### **Transfer**

Between stores transfer — grievor did not have good and sufficient reasons for refusing transfer; grievance dismissed. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union; Colangeli grievance*, January 23, 1981. Majority: J.L. Roberts, Sargeant — 12 pages; dissent: Spaxman — 2 pages. (101)

#### **Union Officials**

Scheduling of work — plant chairman and local union president not both entitled to work the day shift; grievance dismissed. *Re Galteco Inc. and International Molders and Allied Workers, Local 29; policy grievance*, February 26, 1981. Rose — 7 pages. (102)†

Super-seniority — in absence of express restriction super-seniority overriding; grievances allowed. *Re Hoover Company Limited and United Electrical, Radio and Machine Workers of America, Local 520; Kurchik and LePore grievances*, March 23, 1981. McLaren, Eames, Bosnich — 12 pages. (103)\*

Super-seniority — union official must have present capacity to perform the tasks required; grievance dismissed. *Re Pullman Trailmobile Canada Limited and United Automobile Workers, Local 397; Harding grievance*, February 9, 1981. Weatherill — 6 pages. (104)

Impounding of union dues by employer — no right of set-off; grievance allowed. *Re Sun Haulage Inc. and Teamsters' Local Union 230; union grievance*, March 20, 1981. Majority: M.G. Picher, Beaulieu — 9 pages; dissent: Natale. (105)\*

#### **Vacation Pay**

Implementation of settlement agreement. *Re Fort Erie, Corporation of Town of, and Canadian Union of Public Employees, Local 714; union grievance*, February 25, 1981. Kennedy, Bosnich, Yeo — 5 pages. (106)

Part-time employees paid on "fee for service" basis — all members of bargaining unit entitled to additional four percent of earnings as vacation pay; grievance allowed. *Re York University and Canadian Union of Educational Workers; union grievance*, March 20, 1981. Black — 12 pages. (107)†

#### **Vacations**

Scheduling — grievor alleging discrimination in scheduling — past practice not considered; grievances dismissed. *Re Fort Erie, Corporation of Town of, and Canadian Union of Public Employees; Warner grievances*, March 4, 1981. Majority: O'Connor, Yeo — 12 pages; dissent: Bosnich. (108)

#### **Wages**

Change of job content alleged — "creeping changes" considered to be of minor significance; grievance dismissed. *Re Canadian General Electric Company Limited and United Electrical, Radio and Machine Workers of America, Local 541; group grievance*, March 9, 1981. O'Connor — 8 pages. (109)†

Failure to pay the agreed increase; grievance allowed. *Re Harry Vogelhut, carrying on business as Harmil Manufacturing Company, and International Ladies Garment Workers' Union, Locals 72-199-192; group grievance*, February 16, 1981. Teplitsky — 4 pages. (110)

Increments — wage increments are subject to performance evaluation; grievances dismissed. *Re Radio Shack Division, Tandy Electronics Limited, and United Steelworkers of America; McAllister and Courtois grievances*, March 19, 1981. Majority: McLaren, Winkler — 7 pages; dissent: Reeds. (111)

Responsibility allowance — grievor temporarily assigned responsibilities of a more senior position; grievance allowed. *Re Wellesley Hospital and Ontario Nurses' Association; Kennedy grievance*, March 13, 1981. Majority: Weatherill, Symes — 8 pages; dissent: Hamilton — 4 pages. (112)

Starting rate in new classification — rate to be determined by reference to years of service. *Re North Bay Hospital Commission (North Bay Civic Hospital) and Canadian Union of Public Employees, Local 139 (supplementary award); Zahara grievance*, February 25, 1981. Duchesneau-McLachlan — 3 pages. (113)

Tip sharing – implementation of compulsory tip sharing during term of collective agreement improper; grievance allowed. *Re Maple Leaf Village Investments Inc. (Sheraton Hotels Niagara) and Hotel, Motel and Restaurant Employees Union, Local 442*; union grievance, March 23, 1981. Houston – 9 pages. (114)†

Unauthorized absence because of refusal to cross picket line of another bargaining unit; no entitlement to wages; grievance dismissed. *Re Public Service Alliance of Canada and Alliance Employees Union; Séguin grievance*, February 24, 1981. Roach – 12 pages. (115)

#### Welfare Plans

Disability pension to supplement other income benefits – provision construed so as to deduct Canada Pension Plan benefits from amount payable under collective agreement plan; grievance dismissed. *Re Muskoka Board of Education and Service Employees Union, Local 478*; policy grievance, January 23, 1981. Majority: Teplitsky, Buckland – 4 pages; dissent: Jessop – 1 page. (116)

#### Work Assignment

Award granting reduction not complied with – hours subsequently reduced: compensation for excess hours at rate applicable when right to relief crystallized; grievance allowed. *Re Fanshawe College of Applied Arts and Technology and Ontario Public Service Employees' Union; Velanoff grievance*, March 3, 1981. Brandt, McGivney, Cochrane – 21 pages. (117)

Job posting areas – determined by products and contracts under which they are produced; grievance denied. *Re Electrohome Limited, Kitchener-Waterloo, and International Brotherhood of Electrical Workers, Local 2345*; union grievance, March 10, 1981. Samuels – 5 pages. (118)†

Manager occupying a classification and thereby causing demotion and reduction in hours of bargaining unit members – grievances allowed. *Re Queen's Hotel, Peterborough, and Hotel and Restaurant Employees and Bartenders Union, Local 604*; Cote and Smelt grievances, February 27, 1981. Houston – 12 pages. (119)†

Reassignment of work between job classifications – reassignment not restricted by collective agreement; proper exercise of management rights; grievance dismissed. *Re Bundy of Canada Limited and United Automobile Workers, Local 1285*; policy grievance, March 10, 1981. H.D. Brown – 15 pages. (120)

Reassignment within classification – no obligation to post job; grievance dismissed. *Re Kendall Canada and United Steelworkers of America, Local 8505*; Marshall grievance, March 3, 1981. Brunner – 8 pages. (121)

Reduction of workers at a work station – done in manner not in violation of collective agreement; grievance dismissed. *Re Uniroyal Limited and United Rubber, Cork, Linoleum and Plastic Workers of America, Local 80*; policy grievance, March 19, 1981. Shime – 11 pages. (122)

Work performed by non-bargaining unit employee deemed to be non-bargaining unit work – grievor not entitled to perform these jobs; grievance denied. *Re Canadian Mist Distillers and Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers, Local Union 304; Hill grievance*, March 11, 1981. Majority: Brandt, Healy – 8 pages; dissent: Tanner – 2 pages. (123)

The following awards in interest arbitrations under *The Hospital Labour Disputes Arbitration Act* were also filed with the Office of Arbitration during the month of March, 1981.

*Birchcliff Nursing Homes Limited carrying on business as Chatelaine Villa Nursing Home and Canadian Union of Public Employees, Local 1742*, Brent, Switzman – 11 pages; dissent: Yeo – 3 pages.

*Essex, Corporation of County of, (Sun Parlour Home for the Aged) and Ontario Nurses' Association*, Ord, Walsh – 7 pages; dissent: Thrasher.

*Groves Park Lodge (336496 Ontario Limited) and Canadian Union of Public Employees, Local 2103*, Fraser, Harnden, Switzman – 26 pages.

*Norfolk Hospital Association (Simcoe) and London and District Service Workers' Union, Local 220*, H.D. Brown, McGowan – 6 pages; dissent: Walsh.

*Ongwanada Hospital, Penrose Division, and Ontario Public Service Employees Union, Local 433*, V.E. Scott, Churchmuir Kearney – 8 pages.

*Sarnia, Corporation of City of, (Marshall Gowland Manor) and London and District Service Workers' Union, Local 220*, Saltman, Drmaj, Walsh – 15 pages; addenda to follow: Drmaj, Walsh.

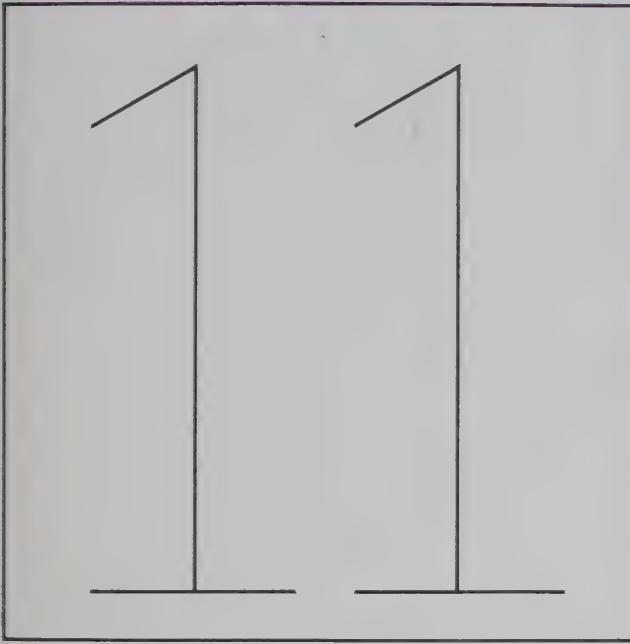
*Spruce Lodge Home for the Aged and Canadian Union of Public Employees, Local 2166*, Betcherman, Switzman – 14 pages; partial dissent: Earle – 2 pages; addendum: Switzman – 1 page.

*Sunnyview Nursing Home Limited and Christian Labour Association of Canada, O'Shea, De Jong* – 23 pages; appendix – 20 pages; dissent: Graham.

*Windsor, Corporation of City of, (Huron Lodge) and Ontario Nurses' Association, (supplementary award)*, Brent, Kavanaugh – 3 pages; dissent: Mayne – 4 pages.

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# Monthly Bulletin



Ontario Ministry of Labour



Hon. Robert Elgie, M.D., Minister  
T.E. Armstrong, QC, Deputy Minister

Office of Arbitration  
400 University Avenue, 6th Floor  
Toronto, Ontario  
M7A 1T7  
Tel. (416) 965-5669

Miss Jean M. Read, Director

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Office of Arbitration as a service to  
persons involved in labour-management  
arbitrations.

## Appointment of Arbitrators

Forms for requests for appointment of arbitrator under section 37a of *The Labour Relations Act* are available on request, from the Office of Arbitration.

## Awards

The following awards were filed with the Office of Arbitration during the month of April, 1981.

The summary was prepared at the Faculty of Law, Queen's University, under the supervision of C.G. Simmons, B.A., B.C.L., LL.M.; D.D. Carter, B.A., B.C.L., LL.B and K.P. Swan, P. Eng., LL.B.

\*Indicates award to be reported in full or in part in *Labour Arbitration Cases*.

†Indicates award issued under section 37a of *The Labour Relations Act*.

**Arbitrability**

Expiry of collective agreement — statutory freeze operating when grievances arose; preliminary objection rejected. *Re Hamilton Civic Hospitals and Ontario Nurses' Association; Ward et al grievances*, April 15, 1981. McLaren — 21 pages. (1)\*†

Retirement policy — board having jurisdiction to determine whether policy arbitrary, unreasonable or in bad faith. *Re Queensway General Hospital and Canadian Union of Public Employees, Local 1106; Reid grievance*, March 31, 1981. Majority: P. Picher, Switzman — 18 pages; dissent: Sanderson. (2)\*

Section 37a — grievance procedure not exhausted and application brought on thirty-first day after employer notified; grievance arbitrable. *Re Radio Shack Division, Tandy Electronics Limited, and United Steelworkers of America; McFadden grievance*, March 31, 1981. Simmons — 13 pages. (3)†

Terminated employee — grievances relating to rights arising during employment relationship arbitrable. *Re Ontario Hydro and Richard L. Hearn TGS Unit of Canadian Union of Operating Engineers and General Workers; Tziros grievance*, April 13, 1981. Kennedy — 20 pages. (4)\*†

**Classification**

Change in some job descriptions only in emphasis and not in substantive content — some grievances allowed. *Re Ontario Hydro and Hotel and Restaurant Employees' and Bartenders' International Union; group grievances*, April 10, 1981. Brent, Beresford, Tate — 16 pages; addendum: Tate — 1 page. (5)

Change of job felt to be more onerous by grievor — deemed to be fair and reasonable; grievance dismissed. *Re Campeau Corporation and Canadian Construction, Building Maintenance and General Workers' Union; Manfredi grievance*, April 22, 1981. D.W. Scott — 12 pages. (6)†

**Damages**

Interest and costs — not appropriate for arbitration; grievance allowed in part. *Re Newport Sportswear Limited and Joint Council Dress and Sportswear Union, Locals 72-199 and 192; union grievance*, April 3, 1981. O'Shea — 16 pages. (7)\*†

**Demotion**

No evidence supporting demotion — grievance allowed. *Re Rowntree MacKintosh Canada Limited and Retail, Wholesale, Bakery and Confectionery Workers Union; Cutone grievance*, April 14, 1981. MacDowell, Sargeant, Spaxman — 7 pages. (8)

**Discharge**

Absence from work while serving jail sentence — failure to notify regarding availability for work; grievance dismissed. *Re Emery Industries Limited and Teamsters Chemical, Energy and Allied Workers Union, Local 1552; McDonald grievance*, April 3, 1981. Hinnegan — 7 pages. (9)

Absence without medical certificates — injuries genuine; conditional reinstatement with limited compensation; grievance allowed. *Re Fleet Industries and International Association of Machinists and Aerospace Workers, Frontier Lodge 171; Yackovich grievance*, April 16, 1981. Brent — 14 pages. (10)

Absence without notice or good reason — notification per accepted practice: "good reason" shown at arbitration; reinstatement without compensation. *Re Bilt Rite Upholstering Company Limited and Upholsterers' International Union, Local 30; Laudonia grievance*, March 31, 1981. Gorsky — 10 pages. (11)†

Absenteeism — absences lengthy but not frequent enough to justify discharge; innocent absenteeism; grievor reinstated on probationary basis. *Re Champion Road Machinery Limited and Gearco Limited and International Association of Machinists and Aerospace Workers, Local 1863; Schmidt grievance*, March 27, 1981. McLaren — 8 pages. (12)

Absenteeism — failure to verify reasons; grievance dismissed. *Re Arvin Automotive of Canada Limited and United Steelworkers of America, Local 8341; Huneault grievance*, April 7, 1981. Majority: Kennedy, Kenny — 15 pages; dissent: Mills (13)

Abusive and threatening conduct — refusal to apologize — lesser penalty not warranted; grievance dismissed. *Re Standard Tube Canada Limited and United Automobile Workers, Local 636; Hughes grievance*, April 7, 1981. O'Shea — 15 pages. (14)

Accident rate excessive — unsuitable for underground employment; grievor to be laid off until job for which he is qualified becomes available. *Re Rio Algom Limited and United Steelworkers of America, Local 5417; Van Wissen grievance*, March 23, 1981. Palmer — 10 pages. (15)

Assault on supervisor — some provocation established; reinstated without back pay. *Re Rockwell International of Canada Limited and United Automobile Workers, Local 1941; Dierckens grievance*, March 29, 1981. Rayner — 16 pages. (16)

Criminal charge — charge preventing performance of policing duties: reinstatement ordered but unpaid suspension until legal disability removed. *Re University of Toronto, Governing Council of, and International Union of United Plant Guard Workers of America, Amalgamated Local 1962; Ramcharan grievance*, March 30, 1981. Hinnegan — 8 pages. (17)

Culminating incident: absence without proper notice; progressive discipline applied; grievance dismissed. *Re Firestone Steel Products of Canada and United Automobile Workers, Local 27; Sutton grievance*, March 24, 1981. Welling — 9 pages. (18)

Expansion of grounds — grievor's attendance record admissible — company not limited to written letter of discharge. *Re De Havilland Aircraft of Canada, Limited, and United Automobile Workers of America, Local 112; Thompson grievance*, April 14, 1981. Gorsky — 4 pages. (19)

Failure to notify company of inability to report to work — lesser penalty substituted. *Re C & M Products Limited and United Steelworkers of America, Local 7606; Quartarone grievance*, April 14, 1981. O'Shea — 23 pages. (20)

Fighting — grievor not the instigator; grievor reinstated without compensation. *Re Leco Industries Limited and Polyhouse Packaging Limited and Oil, Chemical and Atomic Workers International Union, Local 9-819; Bajwa grievance*, April 9, 1981. Kennedy, Allan, MacDonald — 13 pages. (21)

Illness — long absence with persistent failure to provide medical substantiation; grievance dismissed. *Re Hayes-Dana Inc. and United Automobile Workers, Local 767; Buckaway grievance*, March 30, 1981. O'Shea — 22 pages. (22)

Innocent absenteeism — grievor not incapable of regular attendance in the future; conditionally reinstated: grievance allowed. *Re Riverside Yarns Limited and Amalgamated Clothing and Textile Workers Union; Ross grievance*, April 28, 1981. Swan, Ruel, Binning — 11 pages. (23)

Insubordination — culminating incident — progressive discipline applied; grievance dismissed. *Re National Steel Car Corporation Limited and United Steelworkers of America; Robertson grievance*, March 31, 1981. Majority: Rayner, Dixon — 13 pages; dissent: Stetson. (24)

Insubordination — grievor refused to work in sympathy for discharged fellow worker; grievance dismissed. *Re Myer Salit Limited and United Steelworkers of America, Local 14241; Betts grievance*, March 27, 1981. O'Shea — 10 pages. (25)

Insubordination arose out of improper pressures by foreman; reinstatement with compensation. *Re Bell Canada and Communications Workers of Canada; Walker grievance*, March 30, 1981. Majority: Springate, Bekerman — 25 pages; dissent: Churchill-Smith — 4 pages. (26)

Insubordination: order relating to personal appearance breached — insubordination established; grievance dismissed. *Re PCL Packaging Limited and Energy and Chemical Workers Union, Local 593; Collins grievance*, March 28, 1981. Saltman — 13 pages. (27)\*†

Insubordination; refusal to perform assigned work — grievor's dishonest conduct outweighing prior good work record; grievance dismissed. *Re Myer Salit Limited and United Steelworkers of America, Local 14241; Mills grievance*, March 27, 1981. O'Shea — 13 pages. (28)

Insubordination: refusal to work scheduled shifts and shoving manager — substitution of suspension because of mitigating factors. *Re Westfair Foods Limited (Thunder Bay Store 1519) and Union of Canadian Retail Employees, Local 1000; Beaucage grievance*, April 13, 1981. Majority: Sheppard, Piercy — 16 pages; dissent: Robinson — 6 pages. (29)

Intoxication — culminating incident; grievance dismissed. *Re University of Toronto, Governing Council of, and International Union, United Plant Guard Workers of America, Amalgamated Local 1962; Costello grievance*, March 26, 1981. O'Connor — 6 pages. (30)

Intoxication on reporting for work — no past record of alcohol-related misconduct; reinstated; length of suspension to depend on willingness to submit to medical assessment; grievance allowed. *Re Charterways Transportation Limited, Air Terminal Transport Division, and Fuel, Bus, Limousine, Petroleum Drivers and Allied Employees, Local 352; Gallant grievance*, April 21, 1981. Brent, Wightman, Contardi — 11 pages. (31)

Leaving work early without permission — discharge lessened to three-months suspension. *Re PCL Packaging Limited and Energy and Chemical Workers Union, Local 593; Blackburn grievance*, March 28, 1981. Saltman — 11 pages. (32)†

Medical reasons — not proven to affect reasonable attendance at work in future and not involving undue risk of harm; grievance allowed. *Re Allen Industries Canada and United Automobile Workers; Sayn grievance*, March 27, 1981. Weatherill — 13 pages. (33)

Probationary employee — employer satisfied onus of showing that employee unsuitable; grievances dismissed. *Re Toronto Hydro Electric System and Canadian Union of Public Employees, Local 1; Clements grievance, union grievance, April 23, 1981.* Barton — 10 pages. (34)\*

Sale of business — successor employer liable for unjust dismissals; grievance allowed. *Re Laurentian Hotel and Local 579, Retail, Wholesale and Department Store Union; group grievance, April 16, 1981.* H.D. Brown — 9 pages. (35)

Termination of apprenticeship — agreement of joint apprenticeship committee not enforced; grievor conditionally reinstated. *Re Algoma Steel Corporation Limited (Tube Division) and United Steelworkers of America, Local 5595; Thibert grievance, March 13, 1981.* Teplitsky, Forbes, Gurevitch — 5 pages. (36)

Unauthorized absence — failure to keep the company aware of the justification for his continued absence; grievance dismissed. *Re Hamilton Street Railway Company and Amalgamated Transit Workers Union, Local 107; Daley grievance, April 9, 1981.* Majority: Palmer, Billings — 16 pages; dissent: Bosnich — 2 pages. (37)

Unjust dismissal under section 61.5 of *Canada Labour Code* — "supervisor" not a "manager" pursuant to section 27(4) of *Canada Labour Code*; jurisdiction to hear complaint. *Re Eastern Airlines Inc. and Elizabeth Smith, April 28, 1981.* H.D. Brown — 19 pages. (38)

Use of alcohol and drugs during working hours — no reason to mitigate; grievances dismissed. *Re Dominion Bridge Company Limited (Ontario Steel Service Centre) and United Steelworkers of America, Local 7277; Reid and Heikamp grievances, April 23, 1981.* O'Shea — 16 pages. (39)

Violation of employee purchase policy — no intent to defraud; suspension substituted; grievances allowed. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 414; Galati and Pileggi grievances, April 16, 1981.* Majority: Hinngan, Sargeant — 6 pages; dissent: Spaxman — 2 pages. (40)

#### Discipline

Abuse of service van — previous record unblemished; lesser penalty substituted. *Re Bell Canada and Communications Workers of Canada; MacKenzie grievance, April 13, 1981.* Majority: M.G. Picher, Caron — 11 pages; decision to follow: Switzman. (41)

Inattention — prior discipline; grievance dismissed. *Re Steel Company of Canada, Hilton Works, and United Steelworkers of America, Local 1005; Smith grievance, March 13, 1981.* Majority: Delisle, Storie — 5 pages; dissent: Bosnich. (42)

Innocent absenteeism — two-day suspension with pay disciplinary; grievance allowed. *Re Goodyear Canada Inc. and United Rubber, Cork, Linoleum and Plastic Workers of America, Local 232; Poltrok grievance, April 19, 1981.* Kennedy — 11 pages. (43)\*

Insubordination — refusal to clean up after other employees; grievance dismissed. *Re National Steel Car Corporation Limited and United Steelworkers of America; Pronek grievance, March 25, 1981.* Majority: Palmer, Dixon — 15 pages; dissent: Davis. (44)

Insubordination and abusive language — no provocation; grievance dismissed. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union; Clark grievance, April 6, 1981.* Majority: H.D. Brown, Sargeant — 11 pages; dissent: Spaxman. (45)

Insubordination and improper work attitude — grievor did not make extra customer calls when asked by the company; no explicit refusal found; grievance allowed. *Re Hostess Foods Limited and United Food and Commercial Workers International Union, Local 617P; Fanson grievance, April 2, 1981.* Rose — 12 pages. (46)†

Insubordination; refusal to apologize in proper manner — company without right to suspend employee; grievance succeeds in part. *Re Auberges Richelieu International Limited and Hotel, Restaurant Employees Union, Local 743; Kelly grievance, April 18, 1981.* Houston — 15 pages. (47)

Insubordination: refusal to obey foreman's orders alleged — no evidence of a direct refusal; grievance allowed. *Re AP Parts of Canada and United Automobile Workers, Local 252; Mladenovic grievance, April 2, 1981.* Majority: Weatherill, Bonello — 7 pages; dissent: Sanderson — 2 pages. (48)

Insubordination: refusal to work — two-week suspension reduced to one week. *Re Firestone Steel Products of Canada and United Automobile Workers, Local 27; Wistow grievance, March 23, 1981.* Weatherill — 8 pages. (49)

Leaving work early without permission — three-day suspension to be replaced by reprimand. *Re Air Canada and Canadian Air Line Employees' Association; Cusick grievance, April 6, 1981.* H.D. Brown — 12 pages. (50)

Negligent care of equipment — lesser penalty not appropriate; grievance denied. *Re Bundy of Canada Limited, Sinterings Division, and United Steelworkers of America, Local 6012; Novakowski grievance*, April 23, 1981. O'Shea — 14 pages. (51)

Procedures — suspensions administered by employer in respect of illegal strike null and void because time limits not complied with; grievance allowed. *Re Douglas Memorial Hospital, Fort Erie, and Canadian Union of Public Employees, Local 1531; group grievance*, April 3, 1981. Verity — 14 pages. (52)\*†

Refusal of work assignment — failure to communicate medical reasons; grievance dismissed. *Re Inco Metals Company, Unit of Inco Limited, and United Steelworkers of America, Local 6500; Van de Kraats grievance*, April 13, 1981. Majority: H.D. Brown, Carrier — 23 pages; dissent: Leore. (53)

Safety infractions — not all infractions proven; element of condonation; suspension reduced to three days. *Re Bell Canada and Communications Workers of Canada; Walker grievance*. See (26), *supra*. (54)

Unauthorized absence — failure to report for work pursuant to company's schedule; grievance dismissed. *Re Garves Foods Company (Foodland I.G.A.) and Retail Clerks Union, Local 409; Guillet grievance*, April 14, 1981. Blair — 17 pages. (55)

#### Estoppel

Prior settlement alleged — does not apply to similar issues arising in future; preliminary objection rejected. *Re Hamilton Civic Hospitals and Ontario Nurses' Association; Ward et al grievances*. See (1), *supra*. (56)\*†

#### Grievance Procedure

Timeliness — company grievance procedure ambiguous in collective agreement; company complied with one interpretation; grievance arbitrable. *Re Clare Brothers Limited and International Molders and Allied Workers Union, Local 194; company grievance*, April 20, 1981. H.D. Brown, Filion, Wohl — 14 pages. (57)

Timeliness — grievance filed two years after date of termination; no reason to extend time periods; grievance not arbitrable. *Re Canadian Appliance Manufacturing Company Limited and United Steelworkers of America, Local 3129; Zderic grievance*, April 22, 1981. O'Shea — 17 pages. (58)

Timeliness — grievor had a reasonable opportunity to assess the company's prior distributions of overtime; time not extended. *Re Miracle Food Mart and United Food and Commercial Workers International Union; Martinovich grievance*, April 13, 1981. Springate — 5 pages. (59)

#### Holiday Pay

Calculation — straight time hourly rate not to be calculated by deducting amount in lieu of benefits; grievance allowed. *Re Scarborough General Hospital and Ontario Nurses' Association; association grievance*, April 15, 1981. Punnett — 10 pages. (60)†

Entitlement where allowance in lieu of fringe benefits — insufficient evidence to show that the formula did not give sufficient extra pay to meet statutory minimum; grievances dismissed. *Re Hamilton Civic Hospitals and Ontario Nurses' Association; Ward et al grievances*. See (1), (56), *supra*. (61)\*†

Part-time and graduate nurses — *The Employment Standards Act* prevailing over lesser benefits conferred by collective agreement; grievance allowed. *Re Greater Niagara General Hospital and Ontario Nurses' Association; group grievance*, March 6, 1981. Majority: Brunner, Robinson — 14 pages; dissent: McKillop — 6 pages. (62)

Qualifying days where holidays occurring during vacation shutdown — qualifying days not applicable; grievance allowed. *Re Libbey-St. Clair Inc. and United Glass and Ceramic Workers of North America, Local 235; Roy grievance*, April 2, 1981. Majority: Adamson, Ferguson — 12 pages; dissent: Wightman — 5 pages. (63)

#### Hours of Work

Attendance at safety committee meetings while not on duty — attendance deemed to be "services"; grievance allowed. *Re St. Vincent Hospital (Ottawa) and Ontario Nurses' Association; Cunningham grievance*, March 28, 1981. Majority: Abbott, Robinson — 21 pages; dissent: Carboneau — 2 pages. (64)

Equivalent time off — concern about safety of employee's performance; grievance allowed. *Re Bell Canada and Communications Workers of Canada; Elliott grievance*, April 14, 1981. Majority: M.G. Picher, Robinson — 9 pages; dissent to follow: Billings. (65)

#### Illness

Right to return to work — case heard by a previous board — no new evidence; grievance denied. *Re Algoma Steel Corporation, Limited, and Local 2251, United Steelworkers of America; Maione grievance*, April 28, 1981. Majority: O'Shea, Morley — 11 pages; dissent: Shultz. (66)

**Job Evaluation**

Increase in work load resulting in increased productivity — no new duties; wage class increased very slightly. *Re Borg Textiles Canada Inc. and Amalgamated Clothing and Textile Workers Union, Local 971; union grievance*, April 14, 1981. Hinnegan — 14 pages. (67)

**Job Vacancy**

Elimination of two job categories — line of progression system frustrated; positions must be posted under terms of collective agreement. *Re Noranda Metal Industries Limited (Fergus Division) and International Brotherhood of Electrical Workers, Local 2345; policy grievance*, April 2, 1981. Barton — 5 pages. (68)†

**Lay-off**

Bumping rights while on lay-off — grievor entitled to bump for the highest paying job he had formerly done, but not for the job of his personal preference; grievance dismissed. *Re Chromasco Limited and United Steelworkers of America, Local 4632; Hildebrandt grievance*, April 3, 1981. Hinnegan — 6 pages. (69)

Bumping rights — no right to bump up; grievance dismissed. *Re Electrohome Limited (Cambridge) and Local 2345, International Brotherhood of Electrical Workers; Boomer grievance*, April 16, 1981. Black — 10 pages. (70)\*†

Qualifications — grievors transferred to other departments and failed to satisfactorily perform their duties during a probationary period; grievances dismissed. *Re Oakridge Villa Nursing Home and Service Employees Union, Local 204; Micone and Carfagnini grievances*, April 27, 1981. Majority: Hinnegan, Budd — 13 pages; dissent: Ortlieb. (71)

**Overtime**

Appropriate remedy where improper distribution — grievor to be compensated and not person with least accumulated overtime; grievance allowed. *Re Federal White Cement Limited and United Cement, Lime and Gypsum Workers' International Union, Local 368; O'Reilly grievance*, April 9, 1981. Rayner, Nokes, Legate — 12 pages. (72)\*

Entitlement — payment of "bonus miles" not excluding overtime; grievance allowed in part. *Re Capital Coach Lines Company Limited (Travelways) and Canadian Brotherhood of Railway, Transport and General Workers; union grievance*, April 16, 1981. D.W. Scott — 16 pages. (73)

Lack of advance notice to work overtime on Sunday — extra hour's pay requested — grievor paid according to terms of collective agreement; grievance dismissed. *Re Bell Canada and Communications Workers of Canada; Rota grievance*, April 27, 1981. Majority: Springate, Whittaker — 7 pages; dissent to follow: Walsh. (74)

**Premium Pay**

Calculation — payment of double shift premium in addition to double regular hourly rate for holiday work required; grievance allowed. *Re Timmins Home for the Aged, City of, (Golden Manor) and Canadian Union of Public Employees, Local 1140; Sillifant et al grievance*, April 29, 1981. Majority: O'Shea, Noble — 11 pages; dissent: Farrell. (75)

Shift differential for premium pay purposes — to be taken into account; grievance allowed. *Re Boise Cascade Canada Limited and Local 92, Fort Frances, United Paperworkers International Union; union grievance*, February 13, 1981. D.J. Brown — 8 pages. (76)

**Probationary Employee**

Access to arbitration for discharge — grievance arbitrable. *Re PCL Packaging Limited and Energy and Chemical Workers Union, Local 593; Collins grievance*. See (27), *supra*. (77)\*†

**Progression**

Failure to schedule training period — early advancement withheld; grievance allowed. *Re Ontario Hydro and Canadian Union of Public Employees, Ontario Hydro Employees' Union, Local 1000; union grievance*, March 31, 1981. Majority: Burkett, Smith — 17 pages; decision to follow: Murray. (78)

**Promotion**

Determination of qualifications — employer may determine the specific qualifications necessary for the job and the relative weight given to each; no evidence of bad faith; grievances dismissed. *Re Lily Cups Limited and Printing Specialties and Paper Products Union, Local 466; Blasdell, James grievances*, March 27, 1981. Houston — 14 pages. (79)†

Qualifications — grievor having seniority but no experience in new classification; grievance denied. *Re Union Carbide Canada Limited, Lindsay Plant, and Printing Specialties and Paper Products Union, Local 512; Hannon grievance*, April 2, 1981. Majority: Brent, Shields — 9 pages; dissent: Nokes. (80)

Qualifications — grievor less qualified than successful candidate; grievance dismissed. *Re Oshawa Co-operative Supplies Limited and Retail, Wholesale and Department Store Union, Local 414; Wilson grievance*, March 23, 1981. Majority: Rose, Harding — 9 pages; dissent: Spaxman — 2 pages. (81)

Qualifications — grievor's qualifications relatively equal; grievance allowed. *Re University of Toronto, Governing Council of, and Service Employees Union, Local 204; Monahan grievance*, March 25, 1981. Majority: Palmer, Ortlieb — 11 pages; dissent: Cook — 3 pages. (82)\*

Qualifications — grievor requiring training to become qualified; grievance dismissed. *Re Dominion Textile Inc. and United Textile Workers of America, Local 468; Bourdeau grievance*, March 2, 1981. Majority: D.W. Scott, Dobbyn — 8 pages; dissent: Bosnich. (83)

#### Scheduling of Work

Work on statutory holiday — junior employee assigned to holiday work; grievor on regular holidays and not available for work; grievance dismissed. *Re Inco Metals Company and United Steelworkers of America; Dickie grievance*, March 30, 1981. Majority: O'Shea, Filion — 14 pages; dissent: Leore — 1 page. (84)

#### Seniority

Calculation — seniority to be calculated on departmental basis; grievance denied. *Re Barlin Carriers Inc. Hamilton Division, and Teamsters Local Union 879; Bain grievance*, April 13, 1981. MacDowell — 11 pages. (85)

Extent of seniority rights — applicable to promotions but not other job postings; grievance dismissed. *Re Canada Alloy Casting Limited and United Steelworkers of America, Local 5699; Ventura grievance*, April 14, 1981. Palmer — 16 pages. (86)

#### Settlement Pay

Entitlement — employees on lay-off "full-time employees"; grievance allowed. *Re National Dry Company Limited and Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers; policy grievance*, April 27, 1981. Weatherill — 11 pages. (87)\*

#### Sick Pay

Application of duty of fairness to discretionary sick leave benefits — grievor had unsatisfactory previous attendance record; grievance dismissed. *Re Air Canada and Canadian Air Line Employees Association; Hackson grievance*, March 30, 1981. Burkett — 21 pages. (88)\*

Entitlement — employee receiving payment in lieu of benefits not entitled to additional sick pay for compensable injury; grievance dismissed. *Re Timmins Home for the Aged, City of, (Golden Manor) and Canadian Union of Public Employees, Local 1140; Sillifant grievance*, April 29, 1981. O'Shea, Farrell, Noble — 13 pages. (89)

Entitlement — employer unilaterally advancing date of maternity leave and discontinuing sick leave; grievance allowed. *Re Salvation Army Grace Hospital, Ottawa, and Ontario Nurses' Association; Doak grievance*, March 10, 1981. Majority: Teplitsky, Herman — 6 pages; dissent: Rivet. (90)

#### Strikes

Union liability — union not relieved of liability by consultation provisions respecting crossing a *bona fide* picket line; grievance allowed. *Re Molson's Brewery (Ontario) Limited and Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers, Local 306; company grievance*, April 1, 1981. Palmer — 15 pages. (91)\*

#### Transfer

Loss of incentive rates with new job alleged — difference in earning potential judged to be minimal and not discriminatory; grievance dismissed. *Re National Steel Car Corporation Limited and United Steelworkers of America, Local 7135; Ferrelli grievance*, April 6, 1981. Kennedy — 12 pages. (92)†

#### Travel Allowance

Requirement of mileage report — employer directed to rescind mileage report order insofar as it relates to employee's private travel; grievance allowed. *Re Belleville, Corporation of City of, and Canadian Union of Public Employees, Local 140; Dalrymple grievance*, April 16, 1981. Black — 8 pages. (93)†

#### Union Officials

Paid time for attending arbitration — entitled to pay for time spent in attendance at arbitration hearings where attendance reasonable; grievance allowed in part. *Re Ross Laboratories, Division of Abbott Laboratories Limited, and Retail, Wholesale and Department Store Union, Local 440; Francois and others grievance*, April 9, 1981. Majority: Kennedy, Wynter — 9 pages; dissent: Ruddy — 4 pages. (94)\*

#### Vacations

Illness: unilateral termination of vacation and substitution of sick pay — full vacation pay without set-off ordered; grievance allowed. *Re Great Lakes Power Corporation Limited, Utilities Division, and Canadian Union of Public Employees, Local 3033; rights grievance*, February 11, 1981. Teplitsky, Bernardi, Kozak — 6 pages. (95)

Scheduling: practicability — requested schedule not practicable; grievance dismissed. *Re Canadian National Railway Company Telecommunications Division and Canadian Telecommunications Division of Canadian Brotherhood of Railway, Transport and General Workers; Mills grievance*, April 7, 1981. Majority: M.G. Picher, Milley — 17 pages; dissent to follow: Switzman. (96)

Scheduling — refusal of vacation days unreasonable; grievance allowed. *Re Chromasco Limited and United Steelworkers of America, Local 4632; Haaima grievance*, April 24, 1981. O'Shea — 21 pages. (97)

#### **Wages**

Payment for returned load; dispatcher instructing grievor to return load; grievance allowed. *Re Canada Crushed Stone (Division of Steetley Industries Limited) and Teamsters Local Union 879; Srbiljania grievance*, April 21, 1981. Adamson — 8 pages. (98)†

Transfer to different wage grid — length of employment not relevant to position on new grid; grievance dismissed. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 414; Perri grievance*, April 6, 1981. Majority: H.D. Brown, Sergeant — 9 pages; dissent: Spaxman — 2 pages. (99)

#### **Welfare Plans**

Disability pension — failure to establish on the evidence the grievor became totally and permanently disabled in the requisite period; grievance dismissed. *Re Goodyear Canada Inc. (New Toronto Factory and Central Distributing Warehouse) and United Rubber, Cork, Linoleum and Plastic Workers of America, Local 232; Perron grievance*, April 13, 1981. Brunner — 13 pages. (100)

#### **Work Assignment**

Illegal assignment alleged — assignment inconsistent with *The Apprenticeship and Tradesmen's Qualifications Act*; grievance allowed. *Re Consumers' Gas Company and National Union of Independent Gas Workers, Local 001; union grievance*, March 27, 1981. Majority: P.C. Picher, Lewis — 25 pages; dissent: Healy — 3 pages. (101)

The following awards in interest arbitrations under *The Hospital Labour Disputes Arbitration Act* were also filed with the Office of Arbitration during the month of April, 1981.

*St. Mary's Hospital, London, Sisters of St. Joseph of Diocese of London as owner and operator of, and London and District Service Workers' Union, Local 220 (full-time), (supplementary award), Brent, Filion, Switzman — 3 pages; appendix — 4 pages.*

*Sudbury, Regional Municipality of, (Pioneer Home for the Aged), and Ontario Nurses' Association, (supplementary award), Brent, Walsh — 1 page; dissent: Baldwin.*

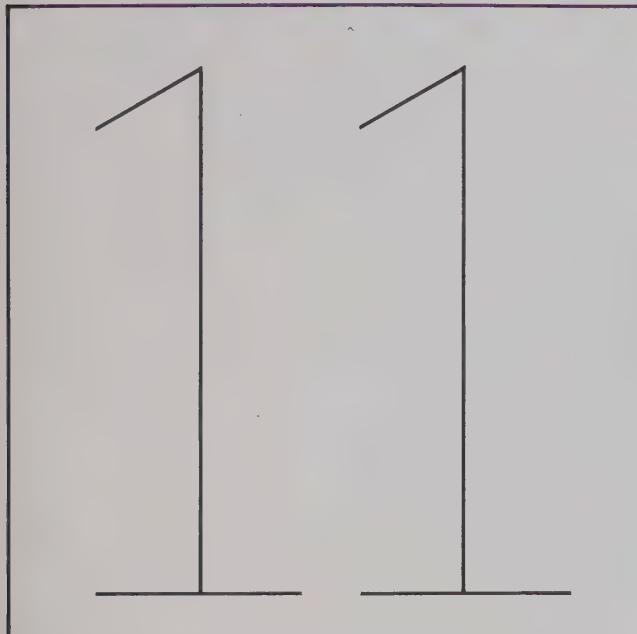
The awards may be seen at the Office of Arbitration, 400 University Avenue, 6th Floor, Toronto. Copies of awards may be obtained for a fee of 50 cents per page. Orders will be filled on receipt of an application and a cheque or money order payable to the Treasurer of Ontario for the applicable amount, which should be forwarded to: Cashier's Office, Ministry of Labour, 400 University Avenue, Toronto, Ontario, M7A 1T7.

#### **Filing Awards**

The attention of chairmen of boards of arbitration and sole arbitrators is drawn to the regulations under *The Labour Relations Act* which require every arbitrator to file a copy of his award with the Office of Arbitration within ten days of issuing such award.

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# Monthly Bulletin



Ontario Ministry of Labour



Hon. Robert Elgie, M.D., Minister  
T.E. Armstrong, QC, Deputy Minister

Office of Arbitration  
400 University Avenue, 6th Floor  
Toronto, Ontario  
M7A 1T7  
Tel. (416) 965-5669

Miss Jean M. Read, Director

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persons involved in labour-management  
arbitrations.

## Appointment of Arbitrators

Forms for requests for appointment of arbitrator under section 37a of *The Labour Relations Act* are available on request, from the Office of Arbitration.

## Awards

The following awards were filed with the Office of Arbitration during the month of May, 1981.

The summary was prepared at the Faculty of Law, Queen's University, under the supervision of C.G. Simmons, B.A., B.C.L., LL.M.; D.D. Carter, B.A., B.C.L., LL.B. and K.P. Swan, P. Eng., LL.B.

\* Indicates award to be reported in full or in part in *Labour Arbitration Cases*.

† Indicates award issued under section 37a of *The Labour Relations Act*.

## Arbitrability

No agreement as to scope of submissions to arbitration — grievances not arbitrable. *Re Glengarry Transport Limited and Canadian Transportation Workers Union, Local 186; Fish and Fredette grievances*, May 20, 1981. Roine — 3 pages. (1)

Section 37a: expired collective agreement — no request for arbitration pursuant to collective agreement despite s.70 of *The Labour Relations Act*; grievance not arbitrable. *Re Milltronics Limited and United Electrical, Radio and Machine Workers of America, Local 567; union grievance*, May 5, 1981. Willes — 21 pages. (2)\*†

Settlement of grievance — union agreeing to terms of reinstatement and grievor returning to work in accordance with conditions; grievance protesting conditions not arbitrable. *Re R.M. Hollingshead Limited and United Brotherhood of Teamsters, Local 1380; Ellis grievance*, May 11, 1981. Majority: Weatherill, Sargeant — 7 pages; dissent: Blandizzi — 3 pages. (3)

Withdrawal of grievance by union opposed by employer — grievance not arbitrable. *Re Canadian Red Cross Blood Transfusion Service (Toronto Centre) and Ontario Nurses' Association; individual grievance*, May 1, 1981. Majority: Shime, Mayne — 10 pages; dissent: Bernardo. (4)\*

#### **Board of Arbitration**

Remedial authority where policy grievance — authority to award damages. *Re Belleville General Hospital and Service Employees International Union, Locals 183 and 663; policy grievance*, May 19, 1981. Majority: M. Picher, Simon — 17 pages; dissent to follow: O'Bryne. (5)\*

#### **Classification**

Extra responsibilities assumed by grievor for several days — not transformed to lead hand job function; grievance denied. *Re Canadian Appliance Manufacturing Company Limited and United Steelworkers of America, Local 3129; Rosenberger grievance*, May 5, 1981. Knopf — 4 pages. (6)

#### **Collective Agreement**

Effect of statutory freeze — entitlement to wage increase because of statutory extension of terms of employment; grievance allowed. *Re Associated Hebrew Schools and Association of General Studies Teachers in Hebrew Day Schools; association grievance*, May 4, 1981. Majority: Brunner, Tate — 10 pages; dissent: Zucker — 6 pages. (7)\*

#### **Damages**

Wages and benefits during delay in implementing award claimed — delay not unreasonable; grievance dismissed. *Re Ottawa Citizen and Ottawa Newspaper Guild, Local 205; Thistle grievance*, April 30, 1981. Majority: Hinnegan, Dinsdale — 5 pages; dissent: Rupert — 3 pages. (8)

#### **Demotion**

Disciplinary demotion — inappropriate for single act of insubordination not reflecting on ability to perform work; suspension substituted. *Re National Arts Centre Corporation and Public Service Alliance of Canada; Mulvihill grievance*, April 8, 1981. Shime — 10 pages. (9)\*

Disciplinary demotion — only appropriate where misconduct indicates employee incompetent to perform work; suspension substituted. *Re Kent, Corporation of County of, and Service Employees Union, Local 210; Meinzinger grievance*, May 5, 1981. Majority: Brandt, Rusak — 11 pages; partial dissent: Brown — 1 page. (10)

#### **Discharge**

Absence because of disability — length of employee's service including disability period for purposes of termination time limits; grievance allowed. *Re Stelco Inc., Hilton Works, and United Steelworkers of America, Local 1005; Bryant grievance*, April 22, 1981. Majority: Welling, Marshall — 9 pages; dissent: Riggs — 4 pages. (11)

Absence after late night of drinking — previous disciplinary record not supporting discharge; reinstatement without compensation. *Re Maple Leaf Mills Limited (Prescott Plant) and Energy and Chemical Workers Union, Local 1; Dake grievance*, April 21, 1981. Palmer — 11 pages. (12)

Absence without permission — absence justified; grievance allowed. *Re Canada Brick Company Limited and United Glass and Ceramic Workers of North America, Local 225; Kristo grievance*, April 30, 1981. Majority: Kennedy, Currie — 8 pages; dissent: Tarasuk. (13)

Absenteeism — physical incapacity not proven; reinstatement without compensation. *Re Windsor, Corporation of City of, and Canadian Union of Public Employees, Local 82; union grievance*, May 7, 1981. Majority: Rose, Jones — 19 pages; dissent: Prince — 6 pages. (14)

Absenteeism: job-related injury resulting in long absence — employer unable to prove inability to return to work; reinstatement without compensation. *Re Sarnia, Municipal Corporation of City of, and Canadian Union of Public Employees, Local 153; Jean grievance*, May 5, 1981. Majority: Brandt, Martin — 16 pages; dissent: Furlong — 2 pages. (15)

Absenteeism: six days of unjustified absence — previous disciplinary actions taken for serious absenteeism; grievance dismissed. *Re Steel Company of Canada, Hilton Works, and United Steelworkers of America, Local 1005; Waind grievance*, May 12, 1981. Majority: Delisle, Murray — 9 pages; dissent: Marshall. (16)

Assault on another employee — disciplinary record not sufficient to support a discharge; suspension substituted. *Re Margaret's Fine Foods Limited and Milk and Bread Drivers, Dairy Employees, Caterers and Allied Workers, Local 647; Ateshi grievance*, May 25, 1981. Majority: Brent, Millar — 11 pages; dissent: Farrar — 2 pages. (17)

Assault on foreman at Christmas party — grievance dismissed. *Re Richards-Wilcox of Canada Limited and International Association of Machinists and Aerospace Workers, Local 756; Gebhardt grievance*, April 21, 1981. Rayner — 14 pages. (18)

Assault on shift boss off company premises — grievor and foreman not able to work in harmony; grievance dismissed. *Re Abitibi Paper Company Limited and Lumber and Sawmill Workers' Union, Local 2693; Viens grievance*, April 28, 1981. Majority: McLaren, Wakely — 28 pages; dissent: Bosnich. (19)

Breaches of Liquor Licence Board regulations — not substantiated on the evidence; grievance allowed. *Re Nordic Hotel (342400 Ontario Limited) and Retail, Wholesale and Department Store Union, Local 431; McGonegal grievance*, May 20, 1981. Teplitsky — 3 pages. (20)

Conflict of interest — grievor's position in family company presenting serious threat to employer's proprietary information; terms of discharge altered. *Re Goodyear Canada Inc. and United Rubber, Cork, Linoleum and Plastic Workers of America, Local 232; El-Sohemy grievance*, May 12, 1981. Adamson — 11 pages. (21)†

Culminating incident — progressive discipline applied; grievance dismissed. *Re Toronto Transit Commission and Local 113, Amalgamated Transit Union; Davies grievance*, May 11, 1981. Majority: Kennedy, Scott — 10 pages; dissent: Bosnich. (22)

Dishonesty — falsifying security officer's time card and concealing unauthorized absence; grievance denied. *Re National Steel Car Corporation Limited and National Steel Car Guard Union; Lardie grievance*, April 14, 1981. Brunner, MacDermid, Hirst — 23 pages. (23)

Dishonesty: submitting inaccurate and misleading accident report — mitigating circumstances; suspension substituted. *Re Hamilton Street Railway Company and Amalgamated Transit Union, Local 107; Millhouse grievance*, May 12, 1981. Majority: H.D. Brown, Bosnich — 14 pages; dissent: Billings — 2 pages. (24)

Extended absence for health and personal reasons — request for leave should have been granted; grievance allowed.

*Re Twin Pines Dairy Company Limited and Milk and Bread Drivers, Dairy Employees, Caterers and Allied Employees, Local 647; Raad grievance*, May 13, 1981. Majority: Brent, Millar — 25 pages; dissent: Singh — 2 pages. (25)\*

Extended lunch break — grievor had combined his lunch and coffee breaks; reinstated with full compensation.

*Re 3M Canada Inc., Industrial Mineral Products Division, Havelock Plant, and United Cement, Lime and Gypsum Workers' International Union, Local 294; Molenaar grievance*, May 22, 1981. Majority: Schiff, Nokes — 5 pages; dissent: Adams — 3 pages. (26)

Extended lunch break and insubordination combined with poor disciplinary record — grievance dismissed. *Re Canna Freight Cartage Limited and Teamsters Local Union 419; Tsapoitis grievance*, May 21, 1981. H.D. Brown — 18 pages. (27)

Falling asleep on duty combined with record of similar conduct — suspension substituted. *Re Lincoln Place Nursing Home and Service Employees Union, Local 204; Scott grievance*, April 29, 1981. Majority: Saltman, Beaulieu — 6 pages; dissent: Sargeant — 1 page. (28)

Illegal strike — active participation by the grievor; company's past practice considered; suspension substituted. *Re Butler Metal Products Company Limited and United Automobile Workers, Local 1780; Hamilton grievance*, May 7, 1981. Little — 28 pages. (29)†

Innocent absenteeism — grievor capable of regular attendance henceforth; conditional re-instatement. *Re Hiram Walker and Sons Limited and United Automobile Workers, Local 2027; Allen grievance*, May 25, 1981. Brent — 15 pages. (30)

Insubordination; threatening management, abusive language, fighting — grievor to be reinstated without compensation. *Re Clark Equipment of Canada Limited and International Association of Machinists and Aerospace Workers, Local 2183; Lynch grievance*, May 4, 1981. Teplitsky — 11 pages. (31)

Loss of seniority because of absence of more than three days — loss-of-seniority provision not entailing loss of job; probationary period unreasonable; direction to recall grievor. *Re Borough of East York, Corporation of, and Canadian Union of Public Employees, Local 114, East York Civic Employees (Outside); Long grievance*, April 10, 1981. Majority: Curtis, McNamee — 11 pages; dissent: Smith. (32)

Misrepresentation on application for employment — innocent misrepresentation but no alternative work available; grievance dismissed. *Re Alcan Building Products Division of Alcan Canada Products Limited (Lambeth Plant) and United Automobile Workers, Local 27; Gale grievance*, May 14, 1981. Brent — 9 pages. (33)

Physical condition — changes in plant safety and in provincial safety legislation make reinjury risk smaller; grievance allowed. *Re Multi Fittings Limited and International Molders and Allied Workers Union, Local 49; Poernic grievance*, May 1, 1981. Samuels — 19 pages. (34)

Physical fitness — lack of fitness not established; grievance allowed. *Re Falconbridge Nickel Mines Limited and Sudbury Mine, Mill and Smelter Workers' Union, Local 598; Therriault grievance*, May 19, 1981. Majority: Adams, McCormack — 17 pages; dissent in part: Valin — 1 page. (35)

Quit alleged — pressures surrounding grievor as she left premises; exit not an indication of intent to quit. *Re Tonka Corporation Canada Limited and International Molders and Allied Workers Union; Dhaliwal grievance*, May 14, 1981. Delisle — 11 pages. (36)

Suspension by professional association — employer's refusal to grant indefinite leave of absence reasonable; grievance dismissed. *Re Scarborough General Hospital and Ontario Nurses' Association; Harris grievance*, September 16, 1980. Majority: D.W. Scott, Wakely — 11 pages; dissent: Switzman. (37)

Theft of company property alleged — intent to steal not established; grievance allowed. *Re Denison Mines Limited and United Steelworkers of America; Godbout grievance*, April 22, 1981. Palmer — 14 pages. (38)

Theft of customer's property; not premeditated; suspension substituted. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 414; Defilippo grievance*, April 30, 1981. Majority: Brunner, Spaxman — 11 pages; dissent: Sargeant — 2 pages. (39)

Unauthorized use of company machinery resulting in extensive damage — grievor's attitude honest and co-operative; reinstatement without compensation. *Re Bell Canada and Communications Workers of Canada; Lefaise grievance*, May 19, 1981. M. Picher, Filion, Robinson — 8 pages. (40)

Vandalism at home of plant manager: incompatible with employment relationship — no basis for mitigation of penalty; grievance dismissed. *Re Alcan Canada Products Limited and Metal Foil Workers Union, Local 1663; Roper grievance*, May 14, 1981. Majority: Kennedy, McDermott — 12 pages; dissent: Hurst. (41)\*

Violation of company policy prohibiting riders — permission had been granted to grievor on previous occasions; reinstatement without compensation. *Re Brazeau Transport Inc. and Teamsters Union, Local 938; McGinnis grievance*, May 14, 1981. Adams, McRae, Pigott — 6 pages. (42)

**Discipline**

Absence from work station — suspension appropriate; grievance dismissed. *Re Westinghouse Canada Limited and United Electrical, Radio and Machine Workers of America, Local 504; McKenzie grievance*, April 20, 1981. Majority: Rayner, Kehoe — 11 pages; dissent: Bosnich — 1 page. (43)

Consumption of alcohol — grievance dismissed in respect of two grievors; lesser penalty for one grievor. *Re Metropolitan Toronto, Municipality of, and Canadian Union of Public Employees, Local 43; Allen et al grievance*, April 20, 1981. Majority: Prichard, Beresford — 14 pages; dissent: Tate — 3 pages. (44)

Criminal charges relating to work — suspension pending disposition of charges appropriate; grievance dismissed. *Re Oshawa General Hospital and Ontario Nurses' Association; Hamm grievance*, May 19, 1981. Adams, Cancilla, Robinson — 13 pages; addendum: Robinson — 6 pages. (45)\*

Drinking on the job alleged — conflicting evidence; grievance allowed. *Re Metropolitan Toronto, Municipality of, and Canadian Union of Public Employees, Local 43; Stott grievance*, April 20, 1981. Majority: Prichard, Tate — 10 pages; dissent: Brady — 8 pages. (46)

Emotional problems impairing work performance — no basis for suspension without pay; grievance allowed. *Re St. Clair College of Applied Arts and Technology and Ontario Public Service Employees' Union; Egan grievance*, May 25, 1981. Majority: H.D. Brown, Switzman — 19 pages; dissent: Mason — 1 page; addendum: Switzman — 2 pages. (47)

Failure to communicate absence — progressive discipline applied; grievance dismissed. *Re Stelco Inc. (Hilton Works) and United Steelworkers of America, Local 1005; Brownridge grievance*, May 15, 1981. Majority: Brent, Storie — 10 pages; dissent: Bosnich. (48)

Failure to follow instructions — finding of fact that specific instructions given; suspension substituted for demotion. *Re National Arts Centre Corporation and Public Service Alliance of Canada; Mulvihill grievance*. See (9), *supra*. (49)\*

Insubordination — not protected by employee's qualified privilege as union steward; two-day suspension upheld. *Re De Havilland Aircraft of Canada Limited and United Automobile Workers, Local 112; Pridham grievance*, May 8, 1981. Brunner — 9 pages. (50)

Insubordination — twenty years seniority and clear disciplinary record; lesser suspension appropriate. *Re Hiram Walker and Sons Limited and United Automobile Workers, Local 2027; Legault grievance*, May 25, 1981. Brent — 9 pages. (51)

Insubordination: abusive language directed at management — letter in personnel file not excessive penalty; grievance dismissed. *Re John T. Hepburn, Limited, and United Steelworkers of America, Local 3335; Pritchard grievance*, May 4, 1981. Jolliffe — 11 pages. (52)†

Insubordination; ignoring direction from foreman — grievance denied. *Re Bell Canada and Communications Workers of Canada; Whitely grievance*, May 1, 1981.

Shime, Filion, Robinson — 3 pages; addendum: Robinson — 1 page. (53)

Insubordination: religious dress posing safety hazard — suspension until compliance with dress standard appropriate; grievance allowed in part. *Re DRG Sellotape (Division of DRG Limited) and Printing Specialties and Paper Products Union, Local 466; Sidhu grievance*, May 7, 1981. Brandt, Joyce, Geiger — 23 pages. (54)

Leaving early — under mistaken impression that permission given; grievance allowed. *Re Air Canada and Canadian Air Line Employees' Association; Mahoney grievance*, May 28, 1981. Shime — 6 pages. (55)

Leaving work premises without permission — progressive discipline applied; grievance dismissed. *Re Allied Chemical Canada Limited and United Automobile Workers, Local 89; Budiak grievance*, May 4, 1981. Brandt — 12 pages. (56)

Negligence: failure to move patient in manner required — three-day suspension substituted for five-day suspension. *Re Extendicare Limited and Service Employees Union, Local 204; Johnson grievance*, April 8, 1981. Majority: Brunner, Bernardo — 9 pages; dissent: Craven — 2 pages. (57)

Patient abuse — suspension substituted for three-month demotion with some financial impact; grievance allowed. *Re Kent, Corporation of County of, and Service Employees Union, Local 210; Meinzinger grievance*. See (10), *supra*. (58)

Picketing: interference with employee attempting to work — employer failing to consider personal conduct and culpability of grievor; suspension reduced. *Re Bell Canada and Communications Workers of Canada; Felix grievance*, May 25, 1981. Majority: Kennedy — 10 pages; partial dissent: Smith — 2 pages; partial dissent: Robinson — 1 page. (59)

Sleeping on duty alleged — established in respect of seven grievors, not established in respect of one grievor. *Re Air Canada and International Association of Machinists and Aerospace Workers, District Lodge 148; Philips et al grievance*, May 7, 1981. Gorsky — 13 pages. (60)

Suspension pending criminal trial — grievor acquitted of arson of company property; employer and grievor to share loss resulting from suspension equally. *Re Kimberly-Clark of Canada Limited and Canadian Paperworkers' Union, Local 307; Attard grievance*, May 20, 1981. Majority: Linden, Weisbach — 12 pages; did not concur: Dinsdale. (61)\*

**Grievance Procedure**

Policy grievance brought — not precluded by collective agreement; grievance arbitrable. *Re House of Braemore Furniture Limited and Upholsterers' International Union of North America; policy grievance*, May 7, 1981. O'Connor — 9 pages. (62)†

Timeliness — earlier grievance dropped at arbitration level; new grievance alleging breach of notice provisions untimely. *Re York University and York University Staff Association; Pitch grievance*, May 13, 1981. Egan — 11 pages. (63)†

Timeliness — no prejudice and delay reasonable; preliminary objection dismissed. *Re Ingersoll Machine and Tool Company Limited and United Steelworkers of America, Local 2918; McLelland grievance*, April 21, 1981. Rayner — 12 pages. (64)

Timeliness — no reasonable grounds to exercise discretion under section 37a of *The Labour Relations Act* to extend time periods; grievance dismissed. *Re Ontario Hydro and Canadian Union of Public Employees, Ontario Hydro Employees Union, Local 1000; Jefferson grievance*, May 7, 1981. Majority: Brunner, Moran — 17 pages; dissent: Walsh. (65)

Timeliness — reasonable grounds for extension under section 37(5a) and no substantial prejudice; preliminary objection dismissed. *Re Bestview Holdings Limited and Ontario Nurses' Association; grievors not named*, May 20, 1981. Majority: Abbott, Beaulieu — 10 pages; dissent: Perkins. (66)

**Holiday Pay**

Qualifying day — "working day" occurring when work generally scheduled for entire department; employees who had been laid off not eligible for holiday pay; grievance dismissed. *Re Canon Inc., Foundry Division, St. Thomas, and United Steelworkers of America, Local 4815; union grievance*, May 22, 1981. Brandt — 9 pages. (67)

**Job Posting**

Failure to fill job after posting — no requirement to fill job; grievance dismissed. *Re Domtar Inc., Domtar Packaging (Kraft Paper and Board Division), Trenton, and Canadian Paperworkers Union, Local 1470; Groves grievance*, April 27, 1981. Little, Byers, Quaife — 15 pages. (68)

Qualifications — incumbent did not meet the posted minimum qualifications; company directed to reconsider among the applicants qualified for the position; grievance allowed. *Re Eldorado Nuclear Limited and United Steelworkers of America; Dolly and Wilton grievance*, May 8, 1981. Teplitsky — 5 pages. (69)

Scope of posting — employees from outside bargaining unit entitled to apply; skill, competence and reliability of grievor not relatively equal to those of the successful applicant; grievance dismissed. *Re Beacon Hill Lodges of Canada Limited and Service Employees Union, Local 532; Paule grievance*, March 20, 1981. Majority: Springate, Perkins — 13 pages; dissent: Maddison; addendum: Perkins — 2 pages. (70)

**Job Vacancy**

Existence of vacancy — vacancy not result of lay-off; job posting procedure to be followed; grievance allowed. *Re Gray Forging and Stamping Limited and International Union of Electrical, Radio and Machine Workers, Local 557; Vardy grievance*, May 11, 1981. Majority: Weatherill, Pratt — 12 pages; dissent: Glass — 2 pages. (71)\*

**Lay-off**

Bumping rights — "bumping-up" required only as a "last resort"; no breach of collective agreement. *Re Swingline of Canada Limited and United Steelworkers of America; Bernard grievance*, May 6, 1981. Teplitsky — 4 pages. (72)

Surplus within classification — more senior employee not improperly classified; surplus existing and grievor least senior; grievance dismissed. *Re Ontario Hydro and Hotel and Restaurant Employees' and Bartenders' International Union; Dalton grievance*, May 4, 1981. Majority: Brunner, Brady — 11 pages; dissent: Tate — 2 pages. (73)

Temporary employee — lay-off constituting termination — no entitlement to retroactive pay; grievance dismissed. *Re Bell Canada and Communications Workers of Canada; Lethbridge grievance*, May 14, 1981. Majority: P. Picher, Healy — 42 pages; dissent to follow: Robinson. (74)

**Overtime**

Distribution — agreement requiring that work be offered to regular full-time employees before outsiders; grievance allowed. *Re Nipissing Board of Education and Canadian Union of Public Employees, Local 1165; Levac et al grievance*, April 28, 1981. Lunney — 9 pages. (75)

Distribution — company to act fairly and reasonably; grievance allowed. *Re Canadian Appliance Manufacturing Company Limited and United Steelworkers of America, Local 3129; Morabito grievance*, May 5, 1981. Knopf — 4 pages. (76)

Entitlement where employee detained at end of shift because gate locked — insufficient evidence of length of time detained; grievance dismissed. *Re Canadian Appliance Manufacturing Company Limited and United Steelworkers of America, Local 3129; Panovski grievance*, May 5, 1981. Knopf — 4 pages. (77)

Remedy for improper distribution — damages and not "in-kind" award appropriate; grievances allowed. *Re E.B. Eddy Forest Products Limited (Wood Products Division) and Lumber and Sawmill Workers' Union, Local 2693 of United Brotherhood of Carpenters and Joiners of America; Lively and Totman grievances*, April 20, 1981. Majority: Brunner, Bosnich — 8 pages; dissent: Noonan — 3 pages. (78)

Remedy for improper distribution — "in-kind" remedy not appropriate because grievor's opportunity lost and employer's error not innocent. *Re Ingersoll Machine and Tool Company Limited and United Steelworkers of America, Local 2918; McLelland grievance*. See (64), *supra*. (79)

**Part-time Employees**

Holidays — entitled to extra day-off when regular day-off falling on holiday; grievance allowed in part. *Re Globe and Mail Limited (Division of F.P. Publications (Eastern) Limited) and Southern Ontario Newspaper Guild, Local 87; guild grievance*, January 23, 1981. Majority: Brunner, Tate — 14 pages; addendum: Tate — 1 page; dissent: Filion — 4 pages. (80)

Holiday pay — all regular part-time employees entitled; grievance allowed. *Re Belleville General Hospital and Service Employees International Union, Locals 183 and 663; policy grievance*. See (5), *supra*. (81)\*

**Pension Plan**

Membership — persons hired by company after filing of grievance and prior to issuance of board's award not required to join company's pension plan. *Re Consolidated-Bathurst Packaging Limited (Hamilton Plant) and International Woodworkers of America, Local 6-29; union policy grievance*, April 28, 1981. Brunner, Rogers, Alper — 2 pages. (82)

**Personal Days-off**

Entitlement — need only be an active employee one day in the requisite eligibility period; grievance allowed. *Re Fabricated Steel Products (Windsor) Limited and United Automobile Workers, Local 195; group grievance*, May 13, 1981. Kruger — 9 pages. (83)

**Premium Pay**

Entitlement — Sunday rate prevailing over lesser rate for work prior to regular shift; grievance allowed. *Re Laura Secord, Division of Ault Foods Limited, and Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers, Local 306; Victor et al grievance*, May 4, 1981. Majority: Brandt, Dunsmuir — 8 pages; dissent: Byers. (84)

Responsibility allowance — staff nurse in charge of emergency department carrying out head nurse's core responsibilities; grievances allowed. *Re Smith Falls Community Hospital and Ontario Nurses' Association; Cullen and Mussel grievances*, May 26, 1981. Majority: Beatty, Butler — 18 pages; dissent: O'Byrne — 8 pages. (85)

Schedule changes — union failing to show additional change which requires more premium pay; grievance dismissed. *Re Bell Canada and Communications Workers of Canada; Wheeler grievance*, May 28, 1981. Majority: Shime, Filion — 4 pages; addendum: Switzman — 2 pages. (86)

**Probationary Employees**

Calculation of probationary period — overtime not to be counted. *Re Westway Forwarding Limited and Canadian Brotherhood of Railway, Transport and General Workers; Schonnop grievance*, May 15, 1981. Adell — 14 pages. (87)

Discharge — collective agreement giving employer unqualified right to discharge; grievance not arbitrable. *Re Jordan and Ste-Michelle Cellars Limited and Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers, Local 304; Bridel grievance*, May 7, 1981. Brandt — 14 pages. (88)\*

Discharge — specific intent in collective agreement to disentitle probationary employees from protection of collective agreement — grievance dismissed. *Re Westway Forwarding Limited and Canadian Brotherhood of Railway, Transport and General Workers; Schonnop grievance*. See (87), *supra*. (89)

**Procedure**

Notice of hearing — not required for incumbent of position formerly held by demoted employee; objection dismissed. *Re National Arts Centre Corporation and Public Service Alliance of Canada; Mulvihill grievance*. See (9), (49), *supra*. (90)\*

Re-opening of hearing — new evidence justifying re-opening of hearing. *Re MCL Motor Carriers Limited and Teamsters Union, Local 938; Jones grievance*, May 8, 1981. H.D. Brown, Singleton, McRae — 9 pages. (91)\*

**Promotion**

Improper influences tainting selection process alleged — not established that review board was unfair; grievance dismissed. *Re City of Toronto, Corporation of, and Metropolitan Toronto Civic Employees' Union, Local 43; Schmidt grievance*, May 13, 1981. Majority: Boscariol, Milks — 16 pages; dissent: Tate — 10 pages. (92)

Physical fitness — grievor not physically fit for the job; grievance dismissed. *Re Fleet Industries (Division of Ronyx Corporation Limited) and Frontier Lodge No. 171, International Association of Machinists and Aerospace Workers; Walpole grievance*, May 11, 1981. O'Shea — 15 pages. (93)

Qualifications — abilities relatively equal; grievor's seniority governs; grievance allowed. *Re Falconbridge Nickel Mines Limited and Sudbury Mine, Mill and Smelter Workers' Union, Local 598; Mahant grievance*, May 28, 1981. M. Picher, Churchill-Smith, Robbins — 9 pages; addendum: Churchill-Smith — 1 page. (94)

Qualifications — grievor having minimum necessary qualifications and ability to perform job; grievance allowed. *Re Welland County General Hospital (Service Unit) and Service Employees Union, Local 204; Fortier grievance*, April 7, 1981. Teplitsky, Beaulieu, Dixon — 7 pages. (95)

Qualifications — grievor not possessing greater qualifications or ability than incumbent; grievance denied. *Re Board of Education for City of Hamilton and Office and Professional Employees' International Union, Local 343; Misiti grievance*, April 9, 1981. Teplitsky, McDermott, Knott — 4 pages. (96)

Qualifications — union failing to meet onus of showing that senior employee had approximately equal merit and ability; grievance dismissed. *Re General Motors of Canada Limited and United Automobile Workers, Local 222; Sutherland grievance*, April 21, 1981. Palmer — 10 pages. (97)

Re-consideration of applicants for job posting — mechanical aptitude test to be administered by company; grievances dismissed. *Re Domtar Inc., Domtar Chemicals Group, CDC Division, and Canadian Chemical Workers Union, Local 17; Pridmore et al grievances*, May 19, 1981. Majority: H.D. Brown, Byers — 8 pages; dissent: McIlwain — 1 page. (98)

#### Reporting Pay

Availability of work — employees who left work unable to prove plant too cold and waiving call-in premium; grievance dismissed. *Re George White and Sons Company Limited and International Association of Machinists and Aerospace Workers, Local 2029; group grievance*, April 15, 1981. Majority: Shime, Sergeant — 5 pages; dissent: Wohl. (99)

#### Retirement

Discrimination by reason of age — language in collective agreement to be read in harmony with *The Ontario Human Rights Code*; differential treatment of employees; grievance allowed. *Re Canadian Porcelain Company Limited and United Glass and Ceramic Workers of North America, Local 249; Maas et al grievance*, April 29, 1981. Majority: Brunner, Ferguson — 19 pages; dissent: Wakely — 5 pages. (100)\*

#### Scheduling of Work

Changing shifts — premium payable when a posted work schedule is altered, not payable upon return to posted work schedule; grievance dismissed. *Re Basf Canada Inc. (Cornwall Works) and Canadian Paperworkers Union, Local 775; Nicholson grievance*, March 24, 1981. Little, Bloom, Quaife — 6 pages. (101)

Shift work — turbine breakdown constituting an "abnormal" condition within agreement entitling employer to schedule shift work for repair; grievance dismissed. *Re Ontario Hydro and Canadian Union of Public Employees, Ontario Hydro Employees' Union, Local 1000; union grievance*, May 14, 1981. Majority: Burkett, Hayter — 16 pages; dissent: Robinson — 9 pages. (102)

#### Security of Premises

Theft of grievors' purses and money — lockers provided by company not properly secure; grievances allowed. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 414; Goodfellow and Welles grievances*, April 7, 1981. Majority: Egan, Wynter — 4 pages; dissent: White — 2 pages. (103)

#### Seniority

Sale of the business — employees of the vendor retaining seniority on the sale of the business; grievance allowed. *Re Bermay Corporation Limited and Canadian Union of Industrial Employees, Local 1; union grievance*, May 1, 1981. Majority: Ellis, Iler — 31 pages; dissent: Binning — 4 pages; addendum: Iler — 3 pages. (104)\*

#### Transfer

Inter-store transfer — added parking expense not a good and sufficient reason to refuse transfer; grievance dismissed. *Re Dominion Stores Limited (Department Managers and Clerks) and Retail, Wholesale and Department Store Union, Local 414; Branton grievance*, April 21, 1981. Majority: Brunner, Sergeant — 8 pages; dissent: Dahmer — 2 pages. (105)

Qualifications — selection by ambiguous series of questions insufficient; employer to make fresh selection of applicants for position. *Re Sunnybrook Hospital and Service Employees Union, Local 777; Blackman grievance*, May 15, 1981. Gorsky, O'Neill, Beaulieu — 21 pages; addendum: O'Neill — 1 page. (106)

#### Wages

"All rates" to be increased — referring to each employee's individual rate and not classification rate; grievance allowed. *Re Sun Parlour Greenhouse Growers Co-operative Limited and United Food and Commercial Workers Union, Local 175; union grievance*, April 28, 1981. Rayner — 12 pages. (107)

Incentive rates — no evidence of extent to which poor material slowing work; grievance dismissed. *Re Brown Shoe Company of Canada Limited and United Food and Commercial Workers International Union, Local 486; Duvall et al grievance*, April 29, 1981. Majority: Delisle, Waldeck — 7 pages; dissent: Reilly. (108)

Incentive rates; union requesting company to include in calculation of incentive rates a 1% factor in miscellaneous category — no basis for such a claim in collective agreement; dispute not arbitrable. *Re Gates Rubber of Canada Limited, Brantford, and United Rubber, Cork, Linoleum and Plastic Workers of America, Local 733; union grievance*, April 28, 1981. Majority: R.J. Roberts, Storie — 7 pages; dissent: Hoover. (109)

Job progression — minimum skills established in two cases, not established in two others. *Re Champion Road Machinery Limited and Gearco Limited and International Association of Machinists and Aerospace Workers, Local 1863; Aubut et al grievances*, May 4, 1981. Majority: Brent, Lewis — 10 pages; dissent: Sanderson — 2 pages. (110)

Leaving work early — deprived of half-hour wages — burden of proof on grievors; grievance dismissed. *Re Falconbridge Nickel Mines Limited and Sudbury Mine, Mill and Smelter Workers' Union, Local 598; Kaiser and Irving grievance*, May 28, 1981. Majority: M. Picher, Churchill-Smith — 9 pages; dissent to follow: Robbins. (111)

Piece work rates — new style of furniture could be assigned new piece work rates; grievance dismissed. *Re House of Braemore Furniture Limited and Upholsterers' International Union of North America, Local 30; group grievance*, May 13, 1981. Black — 10 pages. (112)†

Position of classification in wage rate schedule — classification in lower position; grievance dismissed. *Re Gray Forgings and Stampings Limited and International Union of Electrical, Radio and Machine Workers, Local 557; union grievance*, May 25, 1981. Boscaroli — 5 pages. (113)†

Reduction of wages not to result from transfer to smaller school — no entitlement to salary increase for position at larger school; grievance dismissed. *Re Conseil des Ecoles Catholiques Romains de Carlton et Association des Enseignants Franco-Ontariens; Leduc grievance*, April 15, 1981. Carrière, Gauthier, Belanger — 8 pages. (Award in French). (114)

Reinstatement after discharge grievance settled but without compensation — employee not entitled to application of wage progression during absence resulting from discharge; grievance dismissed. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 414; Read grievance*, May 19, 1981. Majority: H.D. Brown, Sergeant — 9 pages; dissent: Spaxman — 2 pages. (115)

Step-up pay — trainees doing higher-rated work on relief basis rather than in training situation; grievance allowed. *Re Ontario Hydro and Canadian Union of Public Employees, Local 1000; policy grievance*, May 15, 1981. Beatty, Hayter, Lewis — 9 pages; addendum: Hayter — 2 pages. (116)

#### Work Assignment

Emergency shutdown — other work outside classification to be assigned only with employee's consent; grievance allowed. *Re E.B. Eddy Forest Products Limited and Canadian Paperworkers Union, Local 34; Verner grievance*, May 16, 1981. Majority: Dunn, Quaife — 8 pages; dissent: Laishley — 5 pages. (117)

Function not assigned — company's perogative to assign tasks; grievance dismissed. *Re Brown Shoe Company of Canada Limited and United Food and Commercial Workers International Union, Local 486; Godard grievance*. See (108), *supra*. (118)

Non-bargaining unit employee performing work — disputed work outside job description of "storesman"; grievance dismissed. *Re De Havilland Aircraft of Canada Limited and United Automobile Workers, Local 112; Stickland and Kopec grievance*, May 6, 1981. Brunner — 10 pages. (119)

The following awards in interest arbitrations under *The Hospital Labour Disputes Arbitration Act* were also filed with the Office of Arbitration during the month of May, 1981.

*Blue Water Rest Home and Service Employees' Union, Local 210*, Betcherman, Wassman — 4 pages; dissent: Lewis — 5 pages.

*Brouillette's Manor Limited and Service Employees' Union, Local 210*, Brent — 13 pages; partial dissent: Bartlet — 3 pages; dissent to follow: Lewis.

*Errinrung Limited and Christian Labour Association of Canada (full-time, part-time and graduate nurses)*, O'Shea, De Jong — 17 pages; partial dissent: Craig — 3 pages.

*Heritage House Rest Home and Christian Labour Association of Canada (Sarnia)*, Betcherman, Burke, De Jong — 6 pages.

*Oaklands Regional Centre and Ontario Nurses' Association*, Saltman, Switzman — 18 pages; partial dissent to follow: Billings.

*St. Mary's Hospital, London, Sisters of St. Joseph of Diocese of London as owner and operator of, and London and District Service Workers Union, Local 220, (part-time)*, Betcherman, Filion, Switzman — 5 pages.

*Youville Nursing Home and Canadian Union of Public Employees, Local 2267*, Saltman, Switzman — 8 pages; partial dissent to follow: Perkins.

The awards may be seen at the Office of Arbitration, 400 University Avenue, 6th Floor, Toronto. Copies of awards may be obtained for a fee of 50 cents per page. Orders will be filled on receipt of an application and a cheque or money order payable to the Treasurer of Ontario for the applicable amount, which should be forwarded to: Cashier's Office, Ministry of Labour, 400 University Avenue, Toronto, Ontario, M7A 1T7.

#### Filing Awards

The attention of chairmen of boards of arbitration and sole arbitrators is drawn to the regulations under *The Labour Relations Act* which require every arbitrator to file a copy of his award with the Office of Arbitration within ten days of issuing such award.

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# Monthly Bulletin



Ontario

Ontario Ministry of Labour

Hon. Robert Elgie, M.D., Minister  
 T.E. Armstrong, QC, Deputy Minister

Office of Arbitration  
 400 University Avenue, 6th Floor  
 Toronto, Ontario  
 M7A 1T7  
 Tel. (416) 965-5669

Miss Jean M. Read, Director

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 Office of Arbitration as a service to  
 persons involved in labour-management  
 arbitrations.

#### Purchase of Awards

Due to increasing demand for the supply of awards, immediate service can no longer be guaranteed. For quantities in excess of twenty pages, lead time of forty-eight hours should be allowed. Also, copies of awards dated prior to 1975, which must be retrieved from storage, cannot be supplied in less than one week.

To facilitate the ordering of awards, summaries printed in future issues of the *Monthly Bulletin* will show only the total number of pages at the end of each listing. For example: Majority: Brown, Hind; dissent: Reisteller — 20 pages.

All awards listed in the *Monthly Bulletin* may be reviewed at the Office of Arbitration, 400 University Avenue, 6th Floor, Toronto, Ontario, M7A 1T7. Copies may be purchased for a fee of 50¢ per page and orders will be filled upon receipt of a request and a cheque or money order payable to the Treasurer of Ontario, for the applicable amount.

#### The Labour Relations Act

Pursuant to *The Statutes Revision Act, 1979*, sections of *The Labour Relations Act* have been re-numbered to incorporate new legislation in correct sequence. For example, section 37 has been changed to section 44, and 37a becomes 45. Future references will therefore be made in accordance with *The Labour Relations Act*, R.S.O., 1980, c.228.

#### Society of Professionals in Dispute Resolution

The Ninth International Conference of the Society of Professionals in Dispute Resolution (S.P.I.D.R.) will be held at the Royal York Hotel, Toronto, on October 19 and 20, 1981.

Following the theme "*Conflict Resolution in Today's Economic Climate*", major speakers and panelists will address current problems and their resolution as they affect arbitration, mediation, labour-management relationships and non-labour disputes.

Further information and registration forms may be obtained from the Office of Arbitration, 400 University Avenue, 6th Floor, Toronto, Ontario, M7A 1T7; telephone (416) 965-5669.

**Appointment of Arbitrators**

Forms for requests for appointment of arbitrator under section 45 (formerly 37a) of *The Labour Relations Act* are available on request from the Office of Arbitration.

**Awards**

The following awards were filed with the Office of Arbitration during the month of June, 1981.

The summary was prepared at the Faculty of Law, Queen's University, under the supervision of C.G. Simmons, B.A., B.C.L., LL.M.; D.D. Carter, B.A., B.C.L., LL.B. and K.P. Swan, P. Eng., LL.B.

\* Indicates award to be reported in full or in part in *Labour Arbitration Cases*.

† Indicates award issued under section 37a of *The Labour Relations Act*.

**Arbitrability**

Discharge of probationary employee — agreement denying recourse to probationary employee; not a violation of section 37(1) of *The Labour Relations Act*; grievance denied. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 414; McMillan grievance*, June 12, 1981. Hinnegan, Spaxman, Sargeant — 15 pages. (1)\*

Discharge of probationary employee — no just cause provision for a probationary employee; recourse to grievance procedure denied in agreement; grievance dismissed. *Re London and District Association for Mentally Retarded and Ontario Public Service Employees Union, Local 144; Stoddard grievance*, June 16, 1981. Majority: Barton, Sharpe — 7 pages; dissent: Beaulieu — 1 page. (2)\*

Harassment of grievor — no provision in collective agreement giving board power to consider. *Re Stelco Inc., Hilton Works, and United Steelworkers of America, Local 1005; Marchesan grievances*, June 23, 1981. Brent, O'Neill, Marshall — 11 pages. (3)

Scope of reference to arbitration — hearing limited to issues raised at grievance steps; grievance adjourned. *Re International Harvester Company of Canada Limited and United Automobile Workers, Local 127; Johnston grievance*, June 29, 1981. Brandt — 8 pages. (4)

**Classification**

Higher classification claimed — comparison with other positions and exercise of some independence establishing improper classification; grievance allowed. *Re Peterborough Civic Hospital and Ontario Public Service Employees Union, Local 345; Sanderson grievance*, May 30, 1981. H.D. Brown, Dixon, Richardson — 17 pages. (5)

Improper classification — parties directed to negotiate new classification for grievor; grievance allowed. *Re Midland, Corporation of Town of, and Ontario Public Service Employees Union, Local 328; Desroches grievance*, June 5, 1981. Houston, Dalrymple, Beaulieu — 15 pages. (6)

Improper classification alleged — not established; grievance dismissed. *Re Gloucester, Corporation of City of, and Canadian Union of Public Employees, Local 1525; Mead grievance*, April 6, 1981. Majority: Roach, Armstrong — 7 pages; did not concur: Kearny. (7)

Job descriptions outdated and not coinciding with assigned duties of grievors; hearing adjourned *sine die* for parties to redraft job descriptions. *Re Welland, Corporation of City of, and Canadian Union of Public Employees, Local 1115; Smith and Daubney grievances*, June 1, 1981. O'Shea, Bosnich, Noble — 4 pages. (8)

Lead hand position — not a separate classification; not subject to job-posting procedures; grievance dismissed. *Re Noranda Mines Limited (Geco Division) and Canadian Union of Base Metal Workers; union grievance*, May 19, 1981. O'Shea — 17 pages. (9)

**Contracting-out**

Special projects limited by collective agreement to one hundred and twenty days — after one hundred and twenty-day project employer re-started following short break; declaration that employer in breach of collective agreement. *Re St. Catherines Public Library Board and Canadian Union of Public Employees, Local 2220; union grievance*, May 30, 1981. H.D. Brown, Cook, Bosnich — 11 pages. (10)

**Discharge**

Abandonment alleged: unable to perform former duties because of injury — no resignation; grievance allowed. *Re Women's College Hospital and Ontario Nurses' Association; Jarrett grievance*, June 25, 1981. Brent, Ronson, Mayne — 9 pages. (11)

Absence due to criminal charges — false reason given by agent while grievor held without bail; suspension substituted. *Re Steel Company of Canada, Limited, Swansea Works, and United Steelworkers of America, Local 3767; Shpikula grievance*, June 19, 1981. Majority: McLaren, Nicol — 18 pages; dissent: Storie — 5 pages. (12)

Absence due to injury: grievor unable to return when requested — doctor's support showing reasonable excuse; discharge rescinded. *Re General Tire and Rubber Company of Canada Limited and United Rubber, Cork, Linoleum and Plastic Workers of America, Local 455; Lamontagne grievance*, June 3, 1981. Brent, Scott, Bosnich — 10 pages. (13)

Absence from work — company's disciplinary procedures failed to give sufficient notice to grievor of seriousness of his continued conduct; suspension substituted. *Re Hawker Siddeley Canada Inc. (Orenda Division) and International Association of Machinists and Aerospace Workers, District Lodge 717; Wedgewood grievance*, June 17, 1981. Prichard — 16 pages. (14)

Absence from work — satisfactory evidence of unfitness for work produced; grievance allowed. *Re Hayes-Dana Inc. and United Automobile Workers, Local 696; Krawcar grievance*, June 5, 1981. H.D. Brown — 20 pages. (15)

Absence from work station and allowing unauthorized personnel onto grounds — penalty too severe in light of no warning, nature of responsibilities and good record; suspension substituted. *Re Lindsay, Board of Water Commission for Town of, and Canadian Union of Public Employees, Local 855; Woolacott grievance*, June 25, 1981. Gibson — 9 pages. (16)†

Absences culminating in discharge — employer's policy on absenteeism well known to employees; grievance dismissed. *Re Denison Mines Limited and United Steelworkers of America; Robichaud grievance*, June 19, 1981. Adams — 13 pages. (17)

Absenteeism — unfit for work due to consumption of alcohol with prescribed pills — grievor not seeking help; grievance denied. *Re Union Gas Limited and Energy and Chemical Workers Union, Local 633; Murphy grievance*, May 15, 1981. Majority: Rayner, Storie — 13 pages; dissent: Bosnich. (18)

Assault on fellow employee — not a culminating incident; three-month suspension substituted. *Re American Hoist of Canada Limited and United Automobile Workers, Local 1285; Nezval grievance*, June 5, 1981. Bigelow — 4 pages. (19)

Assault on supervisor — absence of mitigating factors; grievance dismissed. *Re Northwestern General Hospital and Service Employees International Union, Local 204; Donalds grievance*, June 4, 1981. Majority: Saltman, Mustard — 13 pages; dissent: Beaulieu — 2 pages. (20)

Breach of safety rules — isolated breach by senior employee with good work record; reinstatement without compensation. *Re Victory Soya Mills, Limited, and Teamsters' Local 1247, Chemical, Energy and Allied Workers Division; Jocaitis grievance*, May 28, 1981. O'Shea, Wilson, Joyce — 12 pages. (21)

Culminating incident; alcoholism — conditional reinstatement. *Re Wallace Barnes Company Limited and United Steelworkers of America, Local 8761; Wallace grievance*, June 17, 1981. Houston — 13 pages. (22)†

Culminating incident: employer unable to meet onus because of conflicting evidence — poor disciplinary record not proper basis for disbelieving grievor; grievance allowed. *Re North American Steel Equipment Company Limited and United Steelworkers of America, Local 6662; Nicolussi grievance*, May 29, 1981. Palmer — 7 pages. (23)

Culminating incident: leaving plant without permission and without notifying employer — poor disciplinary record over short period of employment; grievance dismissed. *Re North American Steel Equipment Company Limited and United Steelworkers of America, Local 6662; Benns grievance*, May 28, 1981. Palmer — 8 pages. (24)

Culminating incident; verbal abuse of co-worker — grievance allowed in part. *Re University Hospital and London and District Service Workers' Union, Local 220; Yeats grievance*, June 23, 1981. R.J. Roberts, Heffernan, Robinson — 12 pages. (25)

Disability: no work available that grievor capable to perform — hearing adjourned to permit company to investigate which jobs grievor capable of performing. *Re National Steel Car Corporation Limited and United Steelworkers of America; Castelluzzo grievance*, June 1, 1981. O'Shea — 9 pages. (26)†

Failure to follow instructions combined with poor disciplinary record — full year of employment without major misconduct acting as mitigating factor; suspension substituted. *Re Sunnybrook Hospital and Service Employees' International Union, Local 777; Stuart grievance*, June 4, 1981. Majority: Springate, Beaulieu — 10 pages; dissent: Reistetter — 1 page. (27)

Failure to report accident — not motivated by improper reasons; no damage to company property; grievance allowed. *Re Brazeau Transport and Teamsters Union, Local 938; Dietrich grievance*, May 12, 1981. Teplitsky, Pigott, McRae — 7 pages (28)

Inability to perform job — difficulty possibly related to eyesight problems; reinstatement for trial period to see if grievor can now satisfactorily perform job. *Re Bell Canada and Communications Workers of Canada; McLean grievance*, May 21, 1981. Majority: Beck, Robinson — 12 pages; dissent: Katkin — 2 pages (29)

Insubordination — breach of company rule to reimburse company for a bad cheque cashed; suspension substituted. *Re Westfort Hotel Limited and Hotel, Motel and Restaurant Employees and Beverage Dispensers Union, Local 757; Kosowan grievance*, May, 1981. Blair, Baarts, Stencer — 19 pages. (30)

Insubordination and leaving work without permission — health problems are mitigating circumstances; reinstatement without compensation. *Re Harris Steel Group Inc. and International Association of Bridge, Structural and Ornamental Iron Workers; Flegg grievance*, June 17, 1981. O'Connor, Bernardo, Bosnich — 5 pages. (31)

Insubordination: profane language and disrespect for supervisor — suspension substituted. *Re Niagara Structural Steel (St. Catharines) Limited and United Steelworkers of America, Local 7012; Bonnar grievance*, June 2, 1981. Samuels — 12 pages. (32)†

Intoxication on job — two employees discharged and a third suspended for six days; grievances dismissed. *Re Canadian Carborundum Company Limited and United Steelworkers of America, Local 4151; Hudson, Merrett, Powley grievances*, May 19, 1981. Majority: Rayner, Redman — 14 pages; dissent: Sharp — 2 pages. (33)

Misappropriation of company property alleged — circumstantial evidence weak; grievance allowed. *Re Puretex Knitting Company Limited and Canadian Textile and Chemical Union; Cover grievance*, June 29, 1981. Kennedy — 8 pages. (34)†

Personal business conducted on employer's time — mistake occurred through grievor's carelessness, not through fraudulent activity; grievance allowed. *Re Air Canada and Canadian Air Line Employees' Association; Dennie grievance*, May 28, 1981. Brandt — 19 pages. (35)

Personality conflict impeding judgement and ability to function — grievor found to be credible; reinstated with suspension. *Re Sunnybrook Medical Centre and Local 777, Service Employees International Union; Gibson grievance*, June 5, 1981. Majority: Kirkwood, Ronson — 13 pages; dissent: Beaulieu — 2 pages. (36)

Physical altercation with supervisor — out of character for grievor; reduced to suspension without compensation. *Re Goodyear Canada Inc., (New Toronto Factory and Central Distributing Warehouse), and United Rubber, Cork, Linoleum and Plastic Workers of America, Local 232; McKendrick grievance*, June 23, 1981. Little — 21 pages. (37)

Physical handicap — employer's hiring policy reasonable; grievance dismissed. *Re Falconbridge Nickel Mines Limited and Sudbury Mine, Mill and Smelter Workers' Union, Local 598; Moreau grievance*, June 25, 1981. Majority: Adams, Valin — 14 pages; dissent: McCormack — 9 pages; addendum: Adams — 2 pages. (38)\*

Physical incapacity — issue of whether employer should offer work in a different bargaining unit is beyond jurisdiction of board; grievance dismissed. *Re Bell Canada and Communications Workers of Canada; Miller grievance*, June 11, 1981. Majority: Shime, Healy — 10 pages; dissent: Robinson — 3 pages. (39)

Sleeping on the job; grievor entitled to consideration as permanent rather than probationary employee; reinstatement without compensation. *Re Riverdale Hospital Board of Governors and Toronto Civic Employees' Union, Local 43, Canadian Union of Public Employees; Keenan grievance*, June 18, 1981. Majority: Carter, Tate — 8 pages; dissent: Hubert — 3 pages. (40)

Theft — employer bringing sufficient proof to meet onus; grievance dismissed. *Re M. Loeb (London) Limited and Teamsters, Local 141; Wing grievance*, May 15, 1981. Majority: Rayner, Craig — 13 pages; dissent: Stewart — 3 pages. (41)

Theft — single act of theft not mitigated by good work record; grievance dismissed. *Re Canadian Blower/Canada Pumps Limited and United Steelworkers of America, Local 3534; Stemmler grievance*, June 4, 1981. Brent, Kitchen, Keck — 9 pages. (42)

Theft of company property — grievor unaware of possession; grievance allowed. *Re Calvert of Canada Limited (a wholly owned subsidiary of Seagram's Limited) and United Automobile Workers, Local 2098; Purdie grievance*, June 19, 1981. Samuels — 7 pages. (43)

Theft of company stock alleged — company failed to meet necessary standard of proof; grievance allowed. *Re Great Atlantic and Pacific Company of Canada Limited and United Food and Commercial Workers International Union, Local 175; Adams grievance*, June 5, 1981. Houston — 14 pages. (44)†

Total disability — other disabled employees continued under welfare plan without termination — grievor to return to status of employee with full benefits. *Re Brewers' Warehousing Company Limited and United Brewers' Warehousing Workers' Provincial Board; Augerman grievance*, May 29, 1981. Curtis — 6 pages. (45)

Unauthorized absence — progressive discipline applied; grievance dismissed. *Re Genosha Hotel and Restaurant Employees' and Bartenders' International Union, Local 280; Stephen grievance*, June 16, 1981. Majority: O'Shea, Furlong — 24 pages; dissent: Wareham — 2 pages. (46)

#### Discipline

Absenteeism — employer not proving that culminating incident was not *bona fide* nor that grievor's rate of absence was excessive. *Re Chromasco Limited and United Steelworkers of America, Local 4632; Ferguson grievance*, May 27, 1981. Abbott — 12 pages. (47)

Absenteeism because of illness — two-week suspension inappropriate for unalterable conduct; grievance allowed. *Re Canadian Ohio Brass Company Limited and Teamsters Chemical, Energy and Allied Workers, Local 1345; Roberto grievance*, June 4, 1981. Palmer — 5 pages. (48)\*

Abuse of flight privileges — mistake honest; grievance allowed. *Re Air Canada and Canadian Air Line Flight Attendants Association; Tibbetts grievance*, June 4, 1981. H.D. Brown — 21 pages. (49)

Attitude: alleged short-tempered, uncaring behavior toward patients and fellow workers — specific charges not proven; grievance allowed. *Re Sunnybrook Medical Centre and Ontario Nurses' Association; Simpson grievance*, May 29, 1981. Palmer, Hatch, McIntyre — 32 pages. (50)

Breach of hygiene rules alleged — employer failing to show that food near work station presented risk of contamination of food products; suspension rescinded. *Re Lancia Bravo Foods Limited and Canadian Food and Allied Workers, Local P530-2; Mior grievance*, May 22, 1981. Majority: Brandt, Lewis — 11 pages; dissent: Healy — 2 pages. (51)

Extended coffee break — evidence not sufficient to uphold employer's discipline; grievance allowed. *Re Metropolitan Toronto, Municipality of, and Metropolitan Toronto Civic Employees Union, Local 43; Benson et al grievance*, June 12, 1981. Majority: Saltman, Tate — 10 pages; addendum: Tate — 1 page; dissent: Moran — 5 pages. (52)

Extended coffee break: foreman's participation making misconduct less severe — suspension removed because had been held in abeyance; grievance allowed in part. *Re Metropolitan Toronto, Municipality of, and Metropolitan Toronto Civic Employees Union, Local 43; Benson et al grievance*. See (52), *supra*. (53)

Failure to yield right-of-way to a privileged vessel alleged — not established on the evidence; grievance allowed. *Re Toronto Harbour Commissioners and Toronto Harbour Commissioners' Employees Union, Local 186, Canadian Union of Public Employees; Hein grievance*, June 19, 1981. Brunner, Sanderson, Griffin — 16 pages. (54)

Improper job performance resulting in one-day suspension for two employees and written reprimand for third — two suspended employees had primary responsibility; grievance dismissed. *Re Canada Packers Inc. and United Food and Commercial Workers International Union, Local 114; Campbell grievance*, April 27, 1981. Majority: Rayner, Williamson — 9 pages; dissent: Young — 2 pages. (55)

Insubordination to supervisor; absent from work area without explanation — grievance denied. *Re Union Carbide Canada Limited and United Electrical, Radio and Machine Workers of America, Local 523; Silvestri grievance*, June 22, 1981. Majority: Hinnegan, Orsini — 8 pages; dissent: Bosnich. (56)

Insubordination — failure to perform assigned duties — grievor's conduct aggravated by supervisor not seeking assistance of shop steward to resolve the incident; lesser penalty substituted. *Re Domglas Inc. and United Glass and Ceramic Workers of North America, Local 260; Khanna grievance*, June 8, 1981. Carter, Steep, Wightman — 7 pages. (57)

Insubordination: taking cancelled afternoon break rather than using grievance procedure — abnormal work day and first collective agreement; suspension reduced. *Re Maple Lodge Farms Limited and United Food and Commercial Workers International Union, Local 1105P; Faria grievance*, June 26, 1981. Verity — 9 pages. (58)†

Intoxication on job alleged — insufficient evidence; grievance allowed. *Re Canadian International Paper Company, Container Division (Markham), and Canadian Paperworkers Union, Local 343; Bric grievance*, June 23, 1981. Brent — 12 pages. (59)

Loss of money — grievor not culpable in first incident; suspension reduced to written warning. *Re Canteen of Canada Limited and Retail, Wholesale and Department Store Union, Local 414; McGhie grievance*, June 26, 1981. Kennedy, Nielson, Dahmer — 10 pages. (60)

Misappropriation of employer's funds — reinstatement in another position where money not involved. *Re Air Canada and Canadian Air Line Employees Association; Sparkes grievance*, June 1, 1981. Majority: Simmons, Thompson — 12 pages; dissent: Milley. (61)

Provocation of physical assault resulting in two and one-half day suspension — grievor less blameworthy than assailant; suspension reduced to one-half day. *Re Polygon Industries Limited and Canadian Union of Operating Engineers and General Workers, Local 101; Cisternas grievance*, May 19, 1981. O'Shea, McManus, Bertram — 10 pages. (62)

Revival: alleged offence could not be revived after promise of no discipline — grievance allowed in part. *Re Stelco Inc., Hilton Works, and United Steelworkers of America, Local 1005; Marchesan grievances*. See (3), *supra*. (63)

Unjustified absence — two-day suspension and consequent loss of holiday benefits appropriate. *Re Domglas Inc. (Brampton, Ontario) and United Glass and Ceramic Workers of North America, Local 260; Rutter grievance*, June 19, 1981. Adams — 11 pages. (64)

Verbal and physical assault on other employee and threats of violence against two supervisors resulting in two and one-half day suspension — employer subsequently compensating grievor for two days; grievance dismissed. *Re RCA Limited and International Union of Electrical, Radio and Machine Workers, Local 532; Grigg grievance*, May 27, 1981. Prichard, Knipfel, Winkler — 8 pages. (65)

Work performance — discipline reduced because earlier report removed from record. *Re Stelco Inc., Hilton Works, and United Steelworkers of America, Local 1005; Marchesan grievances*. See (3), (63), *supra*. (66)

### Evidence

Discussions at grievance settlement meeting — not privileged when the issue is whether grievance settled. *Re Canadian International Paper Company and Canadian Paperworkers Union, Local 343; policy grievance*, June 8, 1981. Brunner — 19 pages. (67)

### Grievance Procedure

Delay — unreasonable and prejudice resulting to employer; preliminary objection sustained. *Re Sault Ste. Marie, Corporation of City of, and Canadian Union of Public Employees, Local 67; Martone grievance*, June 23, 1981. Majority: Kennedy, Forbes — 14 pages; dissent: Kozak — 3 pages. (68)

Settlement agreed to by company — company directed to implement settlement; grievance allowed. *Re Canadian International Paper Company and Canadian Paperworkers Union, Local 343; policy grievance*, June 8, 1981. See (67), *supra*. (69)

Timeliness — reference to arbitration beyond time limit; grievance not arbitrable. *Re MCL Motor Carriers Limited and Teamsters Union, Local 938; Jones grievance*, June 25, 1981. H.D. Brown, Singleton, McRae — 15 pages. (70)

### Health and Safety

Grievor not paid for hours lost for mandatory x-ray — board of arbitration lacks jurisdiction to enforce alleged obligation arising under *The Occupational Health and Safety Act*. *Re Falconbridge Nickel Mines Limited and Sudbury Mine, Mill and Smelter Workers' Union, Local 598; Laframboise grievance*, June 17, 1981. Majority: Adams, Valin — 14 pages; dissent: Robbins. (71)

### Holidays

Calculation of designated holidays where officers seconded to Police College — all receiving the agreed holidays, although some officers receive more owing to the employer's interpretation of the agreement; grievance allowed in part. *Re Halton Regional Board of Commissioners of Police and Halton Regional Police Association; policy grievance*, June 17, 1981. Brent — 6 pages. (72)

### Holiday Pay

Allowance in lieu of fringe benefits — not including holiday pay; grievance allowed. *Re Sensenbrenner Hospital Kapuskasing, and Ontario Nurses' Association; Campbell grievance*, April 23, 1981. Majority: Lunney, Beaulieu — 32 pages; did not concur: Hassell. (73)

Employee on a twelve-hour shift at the time of a holiday entitled to receive twelve hours holiday pay — grievance allowed. *Re Nordfibre Company, North Bay Plant, and Canadian Paperworkers Union, Local 870; Desjardins grievance*, June 18, 1981. Betcherman — 4 pages. (74)†

Lieu day — payment in pay period of actual holiday correct; grievance denied. *Re Windsor Western Hospital Centre, Inc. (Riverview Unit) and Ontario Nurses' Association; Zadworna et al grievance*, June 12, 1981. Brunner, Bartlet, Gordon — 7 pages; addendum: Gordon — 1 page; appendix — 3 pages. (75)

Qualifying days — grievor not working full work day immediately following holiday; grievance denied. *Re Susan Shoe Industries Limited and United Food and Commercial Workers Union; Kelly grievance*, June 3, 1981. Egan, Sergeant, Reilly — 5 pages. (76)

#### Illness

Return to work; employer refused to actively re-employ grievor — grievor complied with requests made of him; grievance allowed. *Re Radio Shack Division, Tandy Electronics Limited, and United Steelworkers of America; McFadden grievance*, June 8, 1981. Simmons — 15 pages. (77)†

#### Interest Arbitration

Clarification — seniority to accumulate while employee on leave for union activity and during maternity leave. *Re Workmen's Compensation Board and Canadian Union of Public Employees, Local 1750; union grievance*, April 6, 1981. Beck — 10 pages. (78)

#### Interpretation

Ambiguity — past practice showing intention to extend benefits during lay-off for three months; grievance allowed. *Re Reynolds Aluminum Company of Canada Limited and International Molders and Allied Workers Union, Local 28; policy grievance*, June 4, 1981. Teplitsky — 7 pages. (79)

Ambiguous terms: "classification system" and "Public Service of Canada" — clause may or may not envisage arbitral review of classification decisions; extrinsic evidence admissible. *Re Public Service Alliance of Canada and Alliance Employees' Union, Unit 1; Kearney et al grievance*, May 28, 1981. Abbott — 6 pages. (80)

Extrinsic evidence: collective agreement unambiguous — memorandum of settlement and past practice not to be considered. *Re Continuous Colour Coat Limited and United Steelworkers of America, Local 7685; union grievance*, June 25, 1981. Betcherman — 4 pages. (81)†

#### Job Evaluation

Establishment of job point values — evidence of comparable jobs and job factors as well as evaluation plan admissible. *Re Northern Telecom Canada Limited and United Automobile Workers, Local 1915; group grievance*, June 2, 1981. Gorsky — 14 pages. (82)

#### Job Posting

Part-time employees — granted right to be "considered as a candidate" even though outside bargaining unit; grievor's application not reasonably considered; employer directed to re-consider grievor's application. *Re Metropolitan Toronto Library Board and Canadian Union of Public Employees, Local 1582, part-time employees; Greenberg grievance*, June 23, 1981. Majority: Brent, Bird — 7 pages; dissent: Perron — 1 pages. (83)

Vacancies due to maternity leave not posted; vacancies considered to be temporary — no language in agreement relating to temporary vacancies; grievance dismissed. *Re Swingline of Canada Limited and United Steelworkers of America, Local 8207 (office); union grievance*, June 22, 1981. Houston — 12 pages. (84)†

Vacancy resulting from promotion temporarily filled — employer undertaking legitimate reorganization; grievance dismissed. *Re Salvation Army Grace Hospital and Service Employees Union, Local 210; Pratt grievance*, June 19, 1981. Kennedy, Brown, Burnell — 8 pages. (85)

#### Lay-off

Absence due to illness when lay-off occurred: not subject to lay-off and recall provisions — entitled to displace junior employee when able to work despite earlier "recall"; grievance allowed. *Re Millhaven Fibres Limited and Energy and Chemical Workers Union, Local 9670; Westcott grievance*, June 2, 1981. Majority — Gorsky, More — 11 pages; dissent: Harris. (86)

Bumping — grievor bumped by someone with more seniority; grievance dismissed. *Re Cochrane-Iroquois Falls District Roman Catholic Separate School Board and Canadian Union of Public Employees, Local 2043; Denault grievance*, June 15, 1981. Majority: O'Shea, Butterfield — 12 pages; dissent: Farrell. (87)

Bumping rights — bumping limited to jobs previously held; grievance dismissed. *Re Johns-Manville Canada Inc. and Energy and Chemical Workers Union, Local 26; Elder et al grievance*, May 29, 1981. O'Connor — 7 pages. (88)†

Bumping rights — grievor entitled to demotion to lower-rated position for which he was qualified; grievance allowed. *Re Falconbridge Nickel Mines Limited and Sudbury Mine, Mill and Smelter Workers Union, Local 598; D'Amour grievance*, March 19, 1981. Majority: Teplitsky, McIntyre — 9 pages; dissent: Valin — 2 pages. (89)

Bumping rights; provision that election of lay-off waives bumping rights — grievor not electing; grievance allowed. *Re Aro Canada Inc. and International Association of Machinists and Aerospace Workers; Enburgh grievance*, June 15, 1981. Majority: Shime, Switzman — 8 pages; dissent: Craig — 2 pages. (90)

Bumping rights: refusal of improper assignment — no duty to mitigate; grievance allowed. *Re Consolidated-Bathurst Packaging Limited and International Woodworkers of America, Local 2-69; Hatter grievance*, May 29, 1981. Majority: Andrews, Bekerman — 7 pages; dissent: Rogers — 6 pages. (91)\*

Full duties of job not assigned — lay-off not improper; grievance dismissed. *Re Inglis Limited (Stoney Creek Plant) and United Automobile Workers, Local 525; Zaharia grievance*, June 5, 1981. Majority: Curtis, Borden — 9 pages; dissent: Craig — 3 pages. (92)

Insurance and welfare benefits — to be extended for three months for temporary and indefinite lay-offs; grievance allowed. *Re Reynolds Aluminum Company of Canada Limited and International Molders and Allied Workers Union, Local 28; policy grievance*. See (79), *supra*. (93)

Overlap of job duties with non-bargaining unit personnel — not sufficient quantity of work to maintain grievor's job; grievance dismissed. *Re Budd Canada Inc. and United Automobile Workers, Local 1451; Allenson grievance*, June 15, 1981. O'Shea — 12 pages. (94)

Qualifications — grievor entitled to a period for more than mere familiarization and entitled to "usual learning period"; grievor not unqualified for the job; grievance allowed.

*Re Goodyear Canada Inc. and United Rubber, Cork, Linoleum and Plastic Workers of America, Local 397; Spencer grievance*, June 17, 1981. Adams — 18 pages. (95)

Qualifications — grievor more able to perform job; grievance allowed. *Re Hamilton Civic Hospitals and Canadian Union of Public Employees; Twaddle grievance*, May 29, 1981. Rayner — 13 pages. (96)

Qualifications; height and weight requirements not conclusive of capacity — grievors did not receive trial period; grievances allowed. *Re Allen Industries Canada and United Automobile Workers; Curic and Fordham grievances*, June 5, 1981. Raynor — 8 pages. (97)

#### Management Rights

Medical examination by company physician — employer having right to alter rules; grievance dismissed. *Re Brampton, Corporation of City of, and Amalgamated Transit Union, Local 1573; union grievance*, June 17, 1981. O'Connor — 7 pages. (98)†

#### Overtime

Distribution — collective agreement silent on equalization; grievance dismissed. *Re Gates Canada Inc. and United Rubber, Cork, Linoleum and Plastic Workers of America, Local 733; Joynes grievance*, May 19, 1981. O'Shea, Hoover, Storie — 14 pages; addendum: Storie. (99)

Distribution — contested overtime work not in grievor's classification; grievance dismissed. *Re Phillips Cables Limited and United Steelworkers of America, Local 7276; Carvalho grievance*, June 12, 1981. Shime — 6 pages. (100)

Distribution — not required to offer work to full-time employees from other distribution centres before part-time employees; grievance dismissed. *Re Great Atlantic and Pacific Company Limited and Retail, Wholesale and Department Store Union, Local 414; Spencer et al grievance*, May 21, 1981. Majority: Brunner, Whittaker — 11 pages; dissent: Dahmer — 4 pages. (101)

Distribution; summer students received overtime before bargaining unit members — summer students not members of bargaining unit; no restriction on performance of bargaining unit work; grievance dismissed. *Re Mastic Manufacturing and United Automobile Workers, Local 27; Waite and Kennedy grievance*, June 19, 1981. Gorsky — 7 pages. (102)

Distribution: violation of established procedures — no violation of collective agreement; grievance denied. *Re Shell Canada (Sarnia Refinery) and Oil, Chemical and Atomic Workers' International Union, Local 9-848; Schnare grievance*, June 22, 1981. Verity — 13 pages. (103)†

Existence of overtime — overtime existing — no improper distribution; grievance dismissed. *Re Johns-Manville Canada Inc. and Energy and Chemical Workers Union, Local 26; Byard grievance*, June 4, 1981. Black — 13 pages. (104)†

#### Overtime Pay

Retroactive pay — premium pay based on regular hourly rate required for period between collective agreements; grievance allowed. *Re Continuous Colour Coat Limited and United Steelworkers of America, Local 7685; union grievance*. See (81), *supra*. (105)†

#### Pensions

Employer failed to pay pensions and welfare at agreed rate — denial of responsibility because of lack of corporate seal invalid. *Re Battler Cartage Limited and Teamsters, Local 879; union grievances*, June 15, 1981. H.D. Brown, Bartolotti, Havens — 9 pages. (106)

#### Premium Pay

Entitlement — maintenance workers doing part of regular shift on weekends not entitled to overtime pay; grievance dismissed. *Re Eldorado Nuclear Limited and United Steelworkers of America, Local 13173; group grievance*, June 3, 1981. Teplitsky — 7 pages. (107)

#### Probationary Employees

Calculation of probationary period — rollback for absence ineffective because grievor not clearly informed; permanent status acquired. *Re Riverdale Hospital Board of Governors and Toronto Civic Employees' Union, Local 43, Canadian Union of Public Employees; Keenan grievance*. See (40), *supra*. (108)

#### Promotion

Qualifications — employer's reliance on written test alone — ignores seniority and other factors of ability; grievance allowed. *Re Falconbridge Nickel Mines Limited and Sudbury Mine, Mill and Smelter Workers Union, Local 598; Hrytsak grievance*, March 16, 1981. Majority: Teplitsky, O'Neil — 9 pages; dissent: Valin — 3 pages; addendum: O'Neil — 1 page. (109)

Qualifications — grievor was neither interviewed nor tested; met qualifications in posting and appeared to be suitable candidate; grievance allowed. *Re Swingline of Canada Limited and United Steelworkers of America; Lowe grievance*, June 16, 1981. Teplitsky — 4 pages. (110)

Qualifications — grievor illiterate and a slow learner; grievance dismissed. *Re Atikokan, Corporation of Township of, and Canadian Union of Public Employees, Local 752; Quinn grievance*, May 27, 1981. Adamson — 16 pages. (111)†

Qualifications — grievor with seniority having abilities equal to those of successful applicants; grievance allowed. *Re Public Utilities Commission of City of London and Canadian Union of Public Employees, Local 4; Rowland grievance*, June 12, 1981. Majority: Brandt, Belecky — 15 pages; dissent: Grant — 2 pages. (112)

Qualifications — senior employee lacking necessary qualifications; grievance dismissed. *Re Sault Ste. Marie, Corporation of City of, and Canadian Union of Public Employees, Local 67; Martone grievance*. See (68), *supra*. (113)

Qualifications: disciplinary and attendance records taken into account — employer within its right to do so; grievance dismissed. *Re Steel Company of Canada Limited, Chemical Lime Works, and Oil, Chemical and Atomic Workers International Union, Local 9-774; McLellan grievance*, June 5, 1981. Majority: Palmer, Brady — 12 pages; dissent: Stewart. (114)

Qualifications: experience — standard of experience carefully established by employer; grievance denied. *Re AEL Microtel Limited and International Union of Electrical, Radio and Machine Workers, Local 526; McManus grievance*, May 18, 1981. Majority: P. Picher, Healy — 19 pages; dissent: Herman — 3 pages. (115)

Qualifications: present abilities and qualifications inadequate — extensive training needed; grievance dismissed. *Re Spruce Falls Power and Paper Company Limited and Office and Professional Employees' International Union, Local 166; Horn grievance*, June 8, 1981. Majority: O'Shea, Noonan — 19 pages; dissent: Farrell. (116)

Temporary employees competing for permanent positions — employer failing to give grievor's longer service special consideration; grievance allowed. *Re Sault Ste Marie, Corporation of City of, and Canadian Union of Public Employees, Local 67; Schultz grievance*, June 15, 1981. Majority: Kennedy, Kozak — 12 pages; dissent: Forbes — 1 page. (117)

#### Remedies

Employer in receivership failing to make certain payments to employees, including wages, and to deduct union dues in breach of collective agreement — appropriate remedies issued. *Re Dresden Residence, Division of 409411 Ontario Limited, and Service Employees Union, Local 210; union grievance*, May 29, 1981. Verity — 20 pages. (118)†

#### Responsibility Pay

Grievors assigned designation of In Charge Nurse in absence of Head Nurse are not assigned responsibilities of Head Nurse — grievance dismissed. *Re Parry Sound District General Hospital and Ontario Nurses' Association; group grievance*, June 15, 1981. Majority: H.D. Brown, O'Byrne — 24 pages; dissent: Beaulieu — 2 pages. (119)

#### Scheduling of Work

Improper notice of shift change — company obligated to pay premium rates; grievance allowed. *Re Alfa-Laval Limited and International Association of Machinists and Aerospace Workers, Kawartha Lodge 872; Meagher grievance*, June 9, 1981. Black — 9 pages. (120)†

Schedule for week changed — employer having right to change schedule provided hours of shift not changed; grievance dismissed. *Re Ontario Produce Company and Teamsters Union Local 419; Gagliardi grievance*, June 15, 1981. Majority: H.D. Brown, Houck — 10 pages; dissent: Stewart — 3 pages. (121)

Shift work assignment — seniority rights of grievor subject to efficiency of operation; grievance dismissed. *Re Fiberglas Canada Inc. and Amalgamated Clothing and Textile Workers Union, Local 1929; LaHay grievance*, June 17, 1981. Samuels — 10 pages. (122)

Weekend — prohibition of scheduling work the weekend prior to a vacation period does not prevent being scheduled for work on Friday past the end of day shift; grievance dismissed. *Re Toronto East General Hospital and Ontario Nurses' Association, Local 115; O'Connor grievance*, June 25, 1981. Majority: Gorsky, Ronson — 8 pages; dissent: Gordon. (123)

#### Seniority

Calculation — calculated from date of service to company, not date of entry to a classification; grievance dismissed. *Re Four Seasons Hotel Limited and Hotels, Clubs, Restaurants, Taverns Employees Union, Local 261; Girouard grievance*, May 5, 1981. Roach, Chadwick, Robichaud — 7 pages. (124)

#### Standby Pay

Entitlement — entitlement continues when standby nurses on duty; grievance allowed. *Re St. Michael's Hospital and Ontario Nurses' Association; Sabidony et al grievance*, June 22, 1981. Majority: H.D. Brown, Symes — 7 pages; dissent: Mustard — 3 pages. (125)

The following awards in interest arbitrations under *The Hospital Labour Disputes Arbitration Act* were also filed with the Office of Arbitration during the month of June, 1981.

*Ottawa General Hospital and Ontario Nurses' Association*, (supplementary award). Majority: Simmons, Goudge; dissent: Belford — 12 pages.

*Participating Hospitals (65 in number) and Canadian Union of Public Employees — Central Issues*. Weiler, Dinsdale, Tirrell; addendum: Dinsdale; addendum to follow: Tirrell — 53 pages.

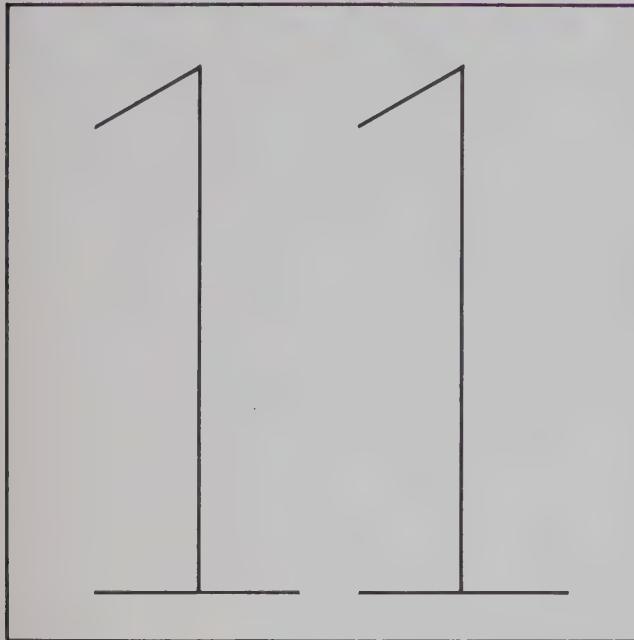
*Participating Hospitals (46 in number) and Service Employees Union — Central Issues*. Majority: Weiler, Sergeant; addendum: Sergeant; addendum preliminary to dissent: Lewis — 39 pages.

*Strathaven Nursing Home Limited and Canadian Union of Public Employees, Local 2226*. Harries; dissent in part: Valin; dissent in part: Beaulieu — 9 pages.

*Toronto East General and Orthopaedic Hospital and Service Employees Union, Local 204 (part-time)*, (supplementary award). Ord, Singer, Craven — 3 pages.

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# Monthly Bulletin



Ontario Ministry of Labour



Hon. Robert Elgie, M.D., Minister  
T.E. Armstrong, QC, Deputy Minister

**Office of Arbitration**  
400 University Avenue, 6th Floor  
Toronto, Ontario  
M7A 1T7  
Tel. (416) 965-5669

Miss Jean M. Read, Director

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Office of Arbitration as a service to  
persons involved in labour-management  
arbitrations.

#### Appointment of Arbitrators

Forms for requests for appointment of arbitrator under section 45 (formerly 37a) of *The Labour Relations Act* are available on request, from the Office of Arbitration.

#### Awards

The following awards were filed with the Office of Arbitration during the month of August, 1981.

The summary was prepared at the Faculty of Law, Queen's University, under the supervision of C.G. Simmons, B.A., B.C.L., LL.M.; D.D. Carter, B.A., B.C.L., LL.B. and K.P. Swan, P.Eng., LL.B.

\*Indicates award to be reported in full or in part in *Labour Arbitration Cases*.

†Indicates award issued under section 45 (formerly 37a) of *The Labour Relations Act*.

#### Arbitrability

Displacement of one union by another — discharge occurring after displacement; discharge not arbitrable in absence of new collective agreement. *Re Corning Canada Inc. and Brewery Workers, Local 304; Watson grievance*, August 13, 1981. M. Picher — 7 pages. (1)\*

#### Bereavement Leave

Timing — "four calendar days" commencing Monday reasonably related to death on Friday; grievance allowed. *Re Air Canada and Canadian Air Line Employees' Association; Brock grievance*, August 26, 1981. Burkett — 13 pages. (2)

### Classification

Higher classification claimed — lack of good reason for delay of annual reclassification; grievance allowed. *Re Board of Police Commissioners for Town of Petrolia and Petrolia Police Association; Pavlovic grievance*, July 21, 1981. Aggarwal — 22 pages. (3)

Higher rate of pay claimed — work not beyond level of skill required within classification; grievance dismissed. *Re De Havilland Aircraft of Canada Limited and United Automobile Workers of America, Local 112; classification grievance*, July 3, 1981. Kruger — 4 pages. (4)

Reclassification sought — no basis for reclassification; grievance dismissed. *Re De Havilland Aircraft of Canada Limited and United Automobile Workers of America, Local 112; group grievance*, July 3, 1981. Kruger — 4 pages. (5)

Some work of higher classification performed — disputed work not central core of that classification; grievance dismissed. *Re Drug Trading Company Limited and Energy and Chemical Workers' Union, Local 11; group grievance*, August 17, 1981. Davis — 9 pages. (6)†

### Contracting Out

Contractors doing substantially same work as bargaining unit — company bound by joint letter to utilize bargaining unit personnel wherever practicable; grievance allowed. *Re Ivaco Rolling Mills, Division of Ivaco Limited, and United Steelworkers of America, Local 7940; union grievance*, July 7, 1981. Adell — 12 pages. (7)\*

Security guards not employees of the company and not members of the bargaining unit; grievance dismissed. *Re Ford Motor Company of Canada Limited and International Union, United Plant Guard Workers of America, Local 1958; policy grievance*, August 7, 1981. MacDowell — 35 pages. (8)\*

### Cost of Living Allowance

Calculation: applying only to salary scales for first year — second year governed by own adjustment provisions; grievance dismissed. *Re Spar Aerospace Limited and Spar Professional and Allied Technical Employees Association; Pavlov and union grievance*, July 28, 1981. Rayner — 12 pages. (9)

### Damages

Compensation claimed for entire period until reinstatement pursuant to previous award — not available for work; grievance dismissed. *Re Hayes-Dana Inc. and United Automobile Workers of America, Local 696; Krawcar grievance*, August 27, 1981. H.D. Brown — 7 pages. (10)

### Discharge

Absence as result of compensable injury; grievor able to return — employer ignoring possible resolution of dispute; reinstatement without compensation ordered. *Re Fabricated Steel Products (Windsor) Limited and United Automobile Workers of America, Local 195; Mouawad grievance*, July 20, 1981. Gorsky — 19 pages. (11)

Absenteeism — no medical evidence that grievor would be unable to work regularly in future; grievance allowed. *Re Hamilton and District Association for the Mentally Retarded and Canadian Union of Public Employees, Local 3009; Sparrock grievance*, August 25, 1981. Majority: Weatherill, Douglas; dissent: Pilgrim — 10 pages. (12)

Absenteeism — record of previous suspensions; grievance dismissed. *Re Lustro Steel Products Limited and United Automobile Workers of America; Wimmer grievance*, August 7, 1981. O'Shea — 18 pages. (13)

Allergy to cleaning agents used in cafeteria — long term exposure detrimental to health; no other work to which grievor could be assigned; grievance dismissed. *Re Canada Catering Limited and Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers, Local 304; Smith grievance*, August 10, 1981. Curtis — 12 pages. (14)

Assault and threat involving use of a weapon on fellow employee alleged — employer not establishing that a knife was involved in incident; grievance allowed. *Re West Park Hospital and Service Employees Union, Local 204; Seecomar grievance*, August 20, 1981. Majority: Kennedy, Beaulieu; dissent: Wace — 14 pages. (15)

Assault on supervisor — out of proportion to any provocation; grievance dismissed. *Re Metropolitan Toronto, Municipality of, and Canadian Union of Public Employees, Local 43; Elliott grievance*, August 7, 1981. Majority: Saltman, Beresford; dissent: Tate — 19 pages. (16)

Criminal conviction — crime not related to job; grievor eligible for temporary absence programme; five-day suspension substituted. *Re Fleet Industries (Division of Ronyx Corporation Limited) and International Association of Machinists and Aerospace Workers, Frontier Lodge No. 171; Cannon grievance*, August 5, 1981. Dunn — 11 pages. (17)

Culminating incident: fighting — provocation and incomplete corrective discipline; suspension substituted. *Re Bostitch Division of Textron Canada Limited and International Association of Machinists and Aerospace Workers, Local 1168, Gabi grievance*, August 5, 1981. Majority: Adams, Switzman; opinion to follow: Gordon — 14 pages. (18)

Failure to come to work when called in — attendance records not prepared in a consistent manner — insufficient evidence to justify discharges; grievances allowed. *Re Thamesview Lodge and Service Employees Union, Local 210; Gray and Walker grievances*, August 25, 1981. Samuels; partial dissents: Bernardo, Brown — 16 pages. (19)

Failure to notify management a machine malfunctioning; termination not warranted in the circumstances; reinstatement without compensation. *Re Kysor Industrial of Canada Limited and United Automobile Workers of America, Local 347; Houveling grievance*, July 29, 1981. Palmer — 8 pages. (20)

Formal qualifications lacking; employer unilaterally required upgrading of graduate nurses — not necessary to perform available work in existing classification; grievances allowed. *Re Riverside Hospital of Ottawa and Ontario Nurses' Association; Lauz and Bautista grievances*, July 31, 1981. Fraser, Symes, Ross — 14 pages. (21)

Impaired condition: sleep and disruptive conduct on the job — inconsistent evidence regarding impairment; reinstatement without compensation. *Re Domtar Inc. and United Steelworkers of America, Local 14994; Wilkinson grievance*, July 24, 1981. Palmer, Byers, Fuller — 10 pages. (22)

Insubordination — grievor deliberately disregarded instructions and did work in a way unsafe to employees; grievance dismissed. *Re Romeo Machine Shop Limited and United Automobile Workers of America, Local 195; Karaboulas grievance*, July 7, 1981. Kruger — 5 pages. (23)

Insubordination alleged — no refusal; grievance allowed. *Re Kenmount Holdings Limited and Labourers' International Union of North America, Local 183; Fitzgerald grievance*, June 26, 1981. Delisle — 10 pages. (24)

Insubordination and assault upon employer; grievance denied. *Re Accurcast Die Casting Limited and International Molders and Allied Workers Union, Local 93; Rabideau grievance*, August 24, 1981. Samuels — 8 pages. (25)

Insubordination; failure to report for work when required — progressive discipline applied; suspension substituted in part. *Re Toronto Star and Southern Ontario Newspaper Guild; Maltais grievance*, July 29, 1981. Prichard — 4 pages. (26)

Intoxication — grievor unfit for work due to intoxication; poor work record due to drinking; grievance dismissed. *Re Samuel, Son and Company Limited, and United Steelworkers of America, Local 6398; Galus grievance*, June 30, 1981. Delisle — 13 pages. (27)†

Misled employer at point of hiring — claimed required experience; grievance dismissed. *Re Falconbridge Nickel Mines Limited and Sudbury Mine, Mill and Smelter Workers' Union, Local 598; Bonneau grievance*, July 31, 1981. Majority: P. Picher, Valin; dissent: McIntyre — 62 pages. (28)\*

Participation in an illegal strike — discharge inappropriate in the circumstances; six-month suspension substituted. *Re St. Peter's Hospital and Canadian Union of Public Employees, Local 778; Harrington, Namaro-Martin and Train grievances*, August 26, 1981. Swan — 36 pages. (29)\*

Refusal to work overtime shift as agreed — poor record and failure of corrective discipline; grievance dismissed. *Re General Bakeries Limited and Bakery, Confectionery and Tobacco Workers International Union, Local 264; Thompson grievance*, July 31, 1981. Majority: O'Shea, McGowan; dissent: Chmielewski — 25 pages. (30)

Sleeping on the job: unplanned result of prior consumption of alcohol and pain killers — poor record; suspension substituted. *Re Heckett Division of the Harsco Corporation and United Steelworkers of America, Local 7577; Les Patocs grievance*, July 17, 1981. Jolliffe — 19 pages. (31)

Theft alleged: not proven — failure to follow proper transfer procedures; suspension substituted. *Re M. Loeb Limited (Ottawa) and Commercial Workers Union, Local 486; Horner grievance*, June 9, 1981. McCaughey, Craig, McCormick — 9 pages. (32)

Theft of company property — mitigating factors; reinstatement without compensation. *Re Ed Learn Ford Sales Limited and United Automobile Workers of America, Local 199; Montel grievance*, July 28, 1981. Palmer — 7 pages. (33)

Theft — not intentional due to alcoholic state; attempts to rehabilitate; arbitrator remaining seized of matter subject to conditions. *Re Molson's Brewery (Ontario) Limited and Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers, Local 304; Elkins grievance*, August 21, 1981. Shime — 11 pages. (34)

Wilful damage to another employee's car in company parking lot; grievance dismissed. *Re Mercury Marine Limited and United Automobile Workers of America; Vella grievance*, August 20, 1981. H.D. Brown — 11 pages. (35)

Work performance unsatisfactory — grievor experienced personal and alcohol problems affecting his work performance; reinstatement without compensation. *Re Falconbridge Nickel Mines Limited and United Steelworkers of America; Perala grievance*, July 24, 1981. Palmer, Keuhl, Valin; addendum: Keuhl; company brief: union brief: company reply brief — 36 pages. (36)

#### Discipline

Absenteeism — failure to provide medical evidence; grievance dismissed. *Re Stelco Inc. (Hilton Works) and United Steelworkers of America, Local 1005; Belanger grievance*, June 30, 1981. Majority: Rayner, Reistetter; dissent: Marshall — 15 pages. (37)

Assault: striking supervisor — employer's credibility preferred; grievance dismissed. *Re Eaton Yale Limited, Forestry Equipment Division, and International Molders and Allied Workers; Oldroyd grievance*, July 20, 1981. Teplitsky — 4 pages. (38)

Insubordination and intimidation of foreman — good working relationship re-established; suspension reduced. *Re Abitibi-Price Inc. and Lumber and Sawmill Workers' Union, Local 2995; Larose grievance*, August 4, 1981. Majority: Carter, Porter; dissent: Bosnich — 6 pages. (39)

Insubordination and use of offensive language — not sufficient grounds for discipline; grievance allowed. *Re De Havilland Aircraft of Canada Limited and United Automobile Workers of America, Local 112; Carson grievance*, July 3, 1981. Kruger — 4 pages. (40)

Insubordination: refusal to do assigned work — grievor denied representation prior to being disciplined; grievance allowed. *Re De Havilland Aircraft of Canada Limited and United Automobile Workers of America, Local 112; Ralcewicz grievance*, July 3, 1981. Kruger — 4 pages. (41)

Insubordination: refusal to work — belief that shift complete; grievance dismissed. *Re City of Toronto, Corporation of, and Metropolitan Toronto Civic Employees' Union, Local 43; Crocker grievance*, July 18, 1981. Majority: Samuels, Milks; dissent: Tate — 11 pages. (42)

Possession of hash oil with intent to traffic — continued employment would not jeopardize hospital's reputation; grievance allowed. *Re Trenton Memorial Hospital and Service Employees International Union, Local 183; McCance grievance*, August 13, 1981. Majority: P. Picher, Simon; dissent to follow: Murray — 17 pages. (43)

Production level of grievor not acceptable — company failed to establish norm of production; grievance allowed. *Re ESB Canada Limited (Exide Canada Inc.) and International Union of Electrical, Radio and Machine Workers, Local 512; Ferreira grievance*, July 21, 1981. Brunner, Riggs, Aslin — 8 pages. (44)

Public criticism of employer — failing to retract his statements; grievance denied. *Re Porcupine Area Ambulance Limited (formerly Porcupine Area Ambulance Service) and Canadian Union of Public Employees, Local 1484; Banke grievance*, August 21, 1981. Majority: O'Shea, Noble; dissent: De Gurse — 17 pages. (45)

Refusal to work overtime — no satisfactory reason given; grievance dismissed. *Re Brewers' Warehousing Company Limited and Canadian Brewery Workers Union; Baker grievance*, July 23, 1981. Rayner — 11 pages. (46)

Theft of customer property resulting in six-month suspension — grievance dismissed. *Re Concrete Supplies of Windsor Inc. and Teamsters, Local 880; Buckley grievance*, August 7, 1981. Majority: MacDowell, Burnell; dissent: McRae — 10 pages. (47)

Union business: leaving duties to attend to union business without permission and discussing union business in presence of patient; grievance denied. *Re Toronto General Hospital and Canadian Union of Public Employees, Local 2001; Rosenthal grievance*, July 21, 1981. Majority: Schiff, LaForme; did not concur: Switzman — 8 pages. (48)

Unlawful work stoppage — company's failure to properly maintain work trails not a justification for a refusal to work; "work now grieve later" supported; grievance dismissed. *Re Spruce Falls Power and Paper Company Limited and Lumber and Sawmill Workers' Union, Local 2995; group grievance*, August 12, 1981. Majority: Kennedy, Noonan; dissent: Bosnich — 19 pages. (49)

Work performance unsatisfactory: failure to complete deliveries and notify employer — failure to notify in breach of obligations; grievance dismissed. *Re Brewers' Warehousing Company Limited and Canadian Brewery Workers Union; Leitch grievance*, July 2, 1981. Rayner — 11 pages. (50)

#### Estoppel

Onus on union to establish employer undertaking to reclassify — no detrimental reliance; grievance dismissed. *Re Laura Secord Division Ault Foods Limited and Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers; Backus grievance*, August 7, 1981. Majority: M. Picher, Byers; dissent: Dunsmuir — 12 pages. (51)

Union's previous grievance on same general issue withdrawn — ambiguous circumstances — no reasonable reliance; grievance not barred. *Re Longyear Canada Inc. and International Association of Machinists and Aerospace Workers, Local Lodge No. 2412; union grievance*, August 13, 1981. P. Picher — 19 pages. (52)\*

#### Grievance Procedure

Timeliness — clear evidence of significant prejudice needed to dismiss wages claim; section 37(5a) applicable. *Re Muskoka Lakes, Corporation of Township of, and Ontario Public Service Employees Union, Local 326; Keogh grievance*, August 7, 1981. Majority: MacDowell, Sargeant; addendum: Sargeant; dissent: Beaulieu — 29 pages. (53)\*

Timeliness — delay reasonable and non-prejudicial; extension under section 37(5a) of *The Labour Relations Act* granted. *Re Falconbridge Nickel Mines Limited and Sudbury Mine, Mill and Smelter Workers Union, Local 598; Bonneau grievance*. See (28), *supra*. (54)\*

Timeliness — notice to arbitrate delivered over two months late by the union; time limit extended under Section 37(5a) of *The Labour Relations Act*; grievance continued. *Re Greater Niagara General Hospital and Ontario Nurses' Association; Pagonis grievance*, August 11, 1981.

Majority: Schiff, Symes; dissent: McKillop — 16 pages. (55)\*

Timeliness — time period for bringing grievance not specified in collective agreement; objection dismissed. *Re Black-River Matheson, Corporation of Township of, and Canadian Union of Public Employees, Local 1490; group grievance*, June 25, 1981. Majority: Duchesneau-McLachlan, Gibson; dissent: LeBel — 19 pages. (56)

**Health and Safety**

Refusal to work — subjective belief enough to trigger procedures under *The Occupational Health and Safety Act* — refusal to do alternate work unreasonable; grievance dismissed. *Re Beachville Limited and Energy and Chemical Workers Union, Local 32*; *Wiseman grievance*, July 31, 1981. Palmer — 16 pages. (57)\*

**Holiday Pay**

Lock-out — entitlement only for holiday after new collective agreement in force; grievance allowed in part. *Re Muskoka Lakes, Corporation of Township of, and Ontario Public Service Employees Union, Local 326*; *Keogh grievance*. See (53), *supra*. (58)\*

Qualifying days — working last regular shift prior to lock-out; grievance allowed in part. *Re Muskoka Lakes, Corporation of Township of, and Ontario Public Service Employees Union, Local 326*; *Keogh grievance*. See (53, 58), *supra*. (59)\*

Qualifying days: lateness on shift prior to holiday — not "last full scheduled shift" and vacation exception applicable; grievance allowed. *Re Cambridge Brass and United Steelworkers of America, Local 4045*; *Adshade grievance*, August 12, 1981. Shime — 7 pages. (60)

**Illness**

Fitness for work: grievor sent home — absence of adequate medical grounds; grievance allowed. *Re De Havilland Aircraft of Canada Limited and United Automobile Workers of America, Local 112*; *Dumoulin grievance*, July 3, 1981. Kruger — 6 pages. (61)

**Interpretation**

Ambiguity — evidence of past practice regarding hours of work and overtime admissible. *Re Black-River Matheson, Corporation of Township of, and Canadian Union of Public Employees, Local 1490*; *group grievance*, June 25, 1981. See (56), *supra*. (62)

**Lay-off**

Bumping rights — employee sent home part way through shift — employer in violation of bumping rights provision; grievance allowed. *Re Northern Telecom Canada Limited (London) and United Automobile Workers of America, Local 27*; *Nariwonczyk grievance*, July 27, 1981. Fraser — 22 pages. (63)

Notice: five-day notice preceding lay-off of more than five-day duration required by agreement — lay-off not more than five days; grievance dismissed. *Re Coca-Cola Limited and Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers; Donoghue grievance*, July 21, 1981. H.D. Brown — 11 pages. (64)

Probationary full-time employees laid off before probationary part-time employees — improperly creating category of temporary employees; grievance allowed. *Re Air Canada and Canadian Air Line Employees' Association*; *union grievance*, August 13, 1981. P. Picher — 19 pages. (65)

Qualifications: grievor lacking qualifications — qualified junior employee required for shorter time than training period; grievance dismissed. *Re Irvin Industries Canada Limited and International Association of Machinists and Aerospace Workers, Local 989*; *Inclima grievance*, August 10, 1981. Dunn — 5 pages. (66)

**Management Rights**

No-smoking rule: smoking prohibited in various plant areas for safety reasons — rule not justifiable; grievance allowed. *Re Accurcast Die Casting Limited and International Molders and Allied Workers Union, Local 93*; *union grievance*, August 27, 1981. Samuels — 4 pages. (67)

**Overtime**

Distribution — company did not make best effort to distribute unscheduled overtime on basis of seniority; grievance allowed. *Re Coca-Cola Limited and Soft Drink Workers' Joint Local Executive Board*; *Rogal grievance*, July 30, 1981. P. Picher — 13 pages. (68)

Encroachment on turnaround periods, overtime on a scheduled day off, and cancellation of scheduled overtime — grievances allowed in part. *Re Ontario Educational Communications Authority and National Association of Broadcasting Employees and Technicians*; *policy grievances*, August 24, 1981. Weatherill — 13 pages. (69)

Junior employee given overtime work outside bargaining unit — seniority provisions not applicable. *Re Kingsway Dalewood Limited and Teamsters' Union, Local 990*; *Singleton grievance*, August 13, 1981. O'Shea, Pesheau, Hibberd — 9 pages. (70)

Temporary employees — temporary employee a member of bargaining unit and entitled to overtime work; grievances dismissed. *Re Gulf Oil Canada Limited and Oil, Chemical and Atomic Workers International Union, Local 9-593*; *multiple grievances*, July 21, 1981. Majority: Rayner, Noonan; dissent: Buchanan; addendum: Noonan — 11 pages. (71)

**Overtime Pay**

Entitlement: work outside "regular hours" not exceeding eight hours — union failing to prove premium pay required; grievance dismissed. *Re Black-River Matheson, Corporation of Township of, and Canadian Union of Public Employees, Local 1490*; *group grievance*, June 25, 1981. See (56, 62), *supra*. (72)

**Pensions**

Disability claimed — evidence not supporting total and permanent disability; grievance dismissed. *Re Firestone Canada Limited (Rexdale Retread Plant) and United Rubber, Cork, Linoleum and Plastic Workers of America, Local 424*; *Crocco grievance*, August 11, 1981. Majority: Hinnegan, Wakely; dissent: Bruder — 8 pages. (73)

**Premium Pay**

"Dirty money": grievors not working in "confined space"—extensive exposure to outside; grievance dismissed. *Re Port Weller Dry Docks, Division of Upper Lakes Shipping Limited, and International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Local 680; McLatchie et al grievance*, July 24, 1981. Palmer, Michaud, O'Neill; addendum: Michaud — 9 pages. (74)

**Probationary Employees**

Arbitrability of discharge: lack of contractual right—arbitrable only when bad faith alleged. *Re Consolidated-Bathurst Packaging Limited, St. Thomas Division, and International Woodworkers of America, Local 2-337; Burrell grievance*, July 24, 1981. Adams; partial dissents: Rogers, McNamee — 20 pages. (75)

Arbitrability of discharge — preclusion from grievance procedure void. *Re Falconbridge Nickel Mines Limited and Sudbury Mine, Mill and Smelter Workers' Union, Local 598; Bonneau grievance*. See (28, 54), *supra*. (76)\*

**Procedure**

Notice to incumbent — not appropriate where discharge being grieved. *Re Kenmount Holdings Limited and Labourers' International Union of North America, Local 183; Fitzgerald grievance*. See (24), *supra*. (77)

**Promotion**

Application for lower-rated job — job not a promotion for grievor; grievance dismissed. *Re Blackstone Industrial Products Limited and United Automobile Workers of America, Local 1132; Flood grievance*, July 22, 1981. Willes — 8 pages. (78)

Availability for job — unavailability because of vacation not critical; grievance allowed. *Re Renfrew, Corporation of County of, (Bonnechere Manor) and Canadian Union of Public Employees, Local 1508; Hass grievance*, August 19, 1981. Davis — 10 pages. (79)†

Medical risk — grievor sensitive to ingredient used in compounding process; grievance dismissed. *Re Pfizer Company Limited and London Pharmaceutical Workers Union, Local 1618; Landon grievance*, July 14, 1981.

Majority: Rayner, Gilfillan; dissent: Lloyd — 13 pages. (80)

Qualifications — grievor less qualified; grievance dismissed. *Re Haley Industries Limited and United Steelworkers of America, Local 4820; Moore grievance*, July 17, 1981.

Majority: Palmer, Churchill-Smith; dissent: Taylor — 5 pages. (81)

Qualifications — grievor qualified for the posted position and had more seniority than the incumbent; grievance allowed. *Re Chubb Fire Security and United Steelworkers of America, Local 6761; Khan grievance*, August 7, 1981. Rubenstein — 23 pages. (82)†

Qualifications — grievor most senior applicant, but not qualified; grievance dismissed. *Re Chubb Fire Security and United Steelworkers of America, Local 6761; Hawco grievance*, July 31, 1981. Rubenstein — 8 pages. (83)†

Qualifications — grievor not equal in skill, ability and performance to incumbent; grievance denied. *Re Electrohome Limited, Kitchener-Waterloo, and International Brotherhood of Electrical Workers, Local 2345; McKenzie grievance*, August 17, 1981. Devlin — 14 pages. (84)†

Qualifications — grievor not qualified for the posted position; grievance dismissed. *Re Port Colborne, Corporation of City of, and Canadian Union of Public Employees, Local 155; Queffelec grievance*, July 21, 1981. Majority: O'Connor, Yeo; dissent: Bosnich — 9 pages. (85)

Qualifications — merit and ability of the grievor relatively equal; grievance allowed. *Re Ford Motor Company of Canada Limited and United Automobile Workers of America, Local 240; Oliver grievance*, July 30, 1981. Palmer — 21 pages. (86)

Qualifications: grievor satisfying normal job requirements — seniority governing; grievance allowed. *Re Drug Trading Company Limited and United Steelworkers of America; Yantha grievance*, July 7, 1981. Curtis — 7 pages. (87)

Qualifications: lacking basic qualifications — entitled to twenty-two day trial period; grievance allowed. *Re Canadian Admiral Corporation Limited, Speed Queen Division, and International Union of Electrical, Radio and Machine Workers, Local 595; Boomer grievance*, August 28, 1981. Majority: Burkett, Aslin; dissent: Hamilton; addenda: Burkett, Aslin — 21 pages. (88)

Qualifications not relatively equal; grievance dismissed. *Re City of Toronto, Corporation of, and Toronto Civic Employees' Union, Local 43, Canadian Union of Public Employees; O'Hanlon grievance*, August 4, 1981. Majority: Carter, Milks; dissent: Tate — 11 pages. (89)

Qualifications: senior employees lacking on the job experience — no requirement to train senior applicant for vacancy; grievances dismissed. *Re Board of Education for City of London and Canadian Union of Public Employees, Local 190; Kamp et al grievances*, August 24, 1981. O'Shea — 22 pages. (90)

Seniority to govern if ability to do the job — onus shifting to management to produce objective facts on past performance making grievor unsuitable for job; grievance allowed. *Re Canada Sand Papers Limited and Energy and Chemical Workers' Union, Local 12; Mitchell grievance*, July 27, 1981. Adams — 11 pages. (91)

**Recall**

Temporary transfer of junior employees due to absent employees — not a "recall"; grievance denied. *Re Webster Manufacturing (London) Limited and International Molders' and Allied Workers' Union, Local 49 (London); McLaughlin grievance*, August 27, 1981. Samuels — 6 pages. (92)

Trial period; grievor's production not satisfactory; grievance dismissed. *Re Maple Lodge Farms Limited and United Food and Commercial Workers International Union, Local 1105P; Mello grievance*, August 10, 1981. Jolliffe — 12 pages. (93)†

**Scheduling of Work**

Notice of change: vacationing employee did not receive two weeks notice — change posted; grievance dismissed. *Re Globe and Mail and Southern Ontario Newspaper Guild, Local 87; Mihaluk grievance*, July 16, 1981. Teplitsky, Filion, Tate; addendum: Tate — 6 pages. (94)

**Seniority**

Calculation: transfer to another plant — proper basis is original employment date rather than transfer date; grievance allowed. *Re Pre-Con Company and Labourers' International Union of North America, Local 506; Lebuchorski grievance*, July 16, 1981. Majority: Palmer, Herman; dissent: McKeown — 16 pages. (95)

Calculation — prior work outside unit not to be considered in establishing individual seniority rights; applicants possessing equal qualifications but grievor possessing greater seniority; grievance allowed. *Re Drug Trading Company Limited and Energy and Chemical Workers' Union, Local 11; Royle grievance*, August 17, 1981. Davis — 10 pages. (96)†

Number of classifications for seniority list — grievor entitled to have "labour" category listed on seniority list; grievances allowed. *Re Timmins, Corporation of City of, and Canadian Union of Public Employees, Local 210; Melanson grievance and union grievance*, August 5, 1981. Dunn, Noble, DeGurse — 7 pages. (97)

Successor employer — Ontario Labour Relations Board declaring agreements with predecessor employers no longer in effect; seniority does not predate the first agreement with new employer; grievances dismissed. *Re Porcupine Area Ambulance Limited and Canadian Union of Public Employees, Local 1484; Marsh and Fitzgerald grievances*, August 21, 1981. Majority: O'Shea, Noble; dissent: DeGurse — 20 pages. (98)

**Transfer**

Transfer delayed while replacement vacancies filled — company within powers; grievance dismissed. *Re RCA Limited (Midland, Ontario) and International Union of Electrical, Radio and Machine Workers, Local 532; Trew grievance*, July 15, 1981. Majority: Brunner, Smeenk; dissent: Knipfel; addendum: Smeenk — 16 pages. (99)

**Vacations**

Entitlement: grievor entitled to three weeks after four years service — *pro rata* adjustments not permitted; grievance allowed. *Re Board of Police Commissioners, Township of Sarnia, and Sarnia Township Police Association; Hayward grievance*, July 24, 1981. Aggarwal — 20 pages. (100)

**Wages**

Minimum guarantee — not a guarantee upon which earnings added; grievance dismissed. *Re Wardair Canada (1975) Limited and Canadian Air Line Flight Attendants Association; May grievance*, August 5, 1981. O'Shea — 16 pages. (101)

Relief work — Operator In Training providing relief work not paid at rate of operator being replaced; grievance allowed. *Re Ontario Hydro and Canadian Union of Public Employees, Ontario Hydro Employees' Union, Local 1000; Vidler grievance*, August 25, 1981. Majority: Burkett, McCullough; dissent: Abbott — 16 pages. (102)

Temporary transfer to higher-rated job — past practice of paying higher rate only after elapse of one week; grievance dismissed. *Re Canada Sand Papers Limited and Energy and Chemical Workers' Union, Local 12; Holst grievance*, August 10, 1981. Majority: Arthurs, Redman; dissent: Pratt — 9 pages. (103)\*

Unauthorized absence alleged — because of refusal to cross picket line — grievor entitled to leave with pay; grievance allowed. *Re Public Service Alliance of Canada and Alliance Employees Union; Howett grievance*, June 25, 1981. Roach — 9 pages. (104)

Unauthorized absence — because of refusal to cross picket line — a policy of permitting the grievors to obtain leave for such absences alleged but not established; grievances dismissed. *Re Public Service Alliance of Canada and Alliance Employees Union; Bourne, David and Dinan grievances*, June 25, 1981. Roach — 18 pages. (105)

Unauthorized absence alleged — grievor refusing to cross picket line to her place of work on October 15, 1979, and in the stead attended her duties elsewhere; grievor performed less than seven consecutive hours of meaningful service; grievance allowed in part. *Re Public Service Alliance of Canada and Alliance Employees Union; Routledge grievance*, June 18, 1981. Roach — 12 pages. (106)

**Welfare Plans**

Benefits terminated after refusal to submit to independent medical examination — medical evidence of legitimate claim; grievance allowed. *Re Certified Automotive Products (Central) Limited and United Steelworkers of America, Local 14831; Colagiocomo grievance*, August 25, 1981. O'Shea — 27 pages. (107)

Insolvency of employer — consent order given. *Re Sepcographics Incorporated of London, Ontario, and Graphic Arts International Union, Local 517; union grievance*, August 21, 1981. Fox — 4 pages. (108)†

**Work Assignment**

Assignment of work to persons outside the bargaining unit — work previously assigned to members of bargaining unit; grievance allowed. *Re Timmins, Corporation of City of, and Canadian Union of Public Employees, Local 210; policy grievance*, August 5, 1981. Dunn, Noble, DeGurse — 7 pages. (109)

Bargaining unit work done by management personnel — must be causal link to lay-off to trigger collective agreement prohibition; grievance dismissed. *Re Cooper Tool Group Limited and United Steelworkers of America; Local 6497; union grievance*, July 30, 1981. Palmer — 8 pages. (110)\*

Combination of classifications alleged; grievance allowed in part. *Re Auberges Richelieu International Limited and Hotel, Restaurant Employees Union, Local 743; union grievance*, August 17, 1981. Black — 14 pages. (111)†

Non-bargaining unit personnel delivering goods to job sites — work not falling under emergency exception; grievance allowed. *Re Longyear Canada Inc. and International Association of Machinists and Aerospace Workers, Local 2412; union grievance*. See (52), *supra*. (112)\*

Trade jurisdiction: work not beyond normal functions of repairmen — fair and reasonable assignment not prejudicial to pipefitters; grievance dismissed. *Re Algoma Steel Corporation Limited and United Steelworkers of America, Local 2251; group grievance*, July 29, 1981. Majority: H.D. Brown, Beresford; dissent: Schultz — 12 pages. (113)

Workers being assigned work belonging to higher classification — work being assigned is properly within job description; grievance dismissed. *Re De Havilland Aircraft of Canada Limited and United Automobile Workers of America, Local 112; group grievance*, July 3, 1981. Kruger — 6 pages. (114)

The following awards in interest arbitrations under *The Hospital Labour Disputes Arbitration Act* were filed with the Office of Arbitration during the month of August, 1981.

*Kennedy Lodge Nursing Homes Limited and Ontario Nurses' Association*, Waisglass, Rosen, Mayne — 6 pages.

*Royal Victoria Hospital of Barrie and Service Employees Union, Local 204 (part-time)*, Saltman, Davidson; dissent: Furlong; addendum: Saltman — 7 pages.

*St. Thomas, Corporation of the City of, (Valleyview Home for the Aged) and London and District Service Workers' Union, Local 220*, V.E. Scott, Walsh; dissent: Noble — 21 pages.

*Spruce Haven Nursing Home Limited and Canadian Union of Public Employees, Local 2422, (full-time and part-time)*, Verity, Wakely; dissent: Pharand; addendum — 24 pages.

*T.L.C. Manor Nursing Centre and Canadian Union of Public Employees (full-time and part-time)*, Ladd, Walsh; addendum to follow: Walsh; partial dissent to follow: Bertuzzi; addendum — 10 pages.

The awards may be seen at the Office of Arbitration, 400 University Avenue, 6th Floor, Toronto. Copies of awards may be obtained for a fee of 50 cents per page. Orders will be filled on receipt of an application and a cheque or money order payable to the Treasurer of Ontario, for the applicable amount.

**Filing Awards**

The attention of chairmen of boards of arbitration and sole arbitrators is drawn to the regulations under *The Labour Relations Act* which require every arbitrator to file a copy of his award with the Office of Arbitration within ten days of issuing such award.

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# Monthly Bulletin



Ontario

Ontario Ministry of Labour

Hon. Robert Elgie, M.D., Minister  
T.E. Armstrong, QC, Deputy Minister

Office of Arbitration  
400 University Avenue, 6th Floor  
Toronto, Ontario  
M7A 1T7  
Tel. (416) 965-5669

Miss Jean M. Read, Director

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Office of Arbitration as a service to  
persons involved in labour-management  
arbitrations.

#### Appointment of Arbitrators

Forms for requests for appointment of arbitrator under section 45 (formerly 37a) of *The Labour Relations Act* are available on request, from the Office of Arbitration.

#### Awards

The following awards were filed with the Office of Arbitration during the month of September, 1981.

The summary was prepared at the Faculty of Law, Queen's University, under the supervision of C.G. Simmons, B.A., B.C.L., LL.M.; D.D. Carter, B.A., B.C.L., LL.B. and K.P. Swan, P.Eng., LL.B.

\* Indicates award to be reported in full or in part in *Labour Arbitration Cases*.

† Indicates award issued under section 45 (formerly 37a) of *The Labour Relations Act*.

#### Arbitrability

Expiration of statutory freeze — employer unilaterally continuing arbitration clause; grievance arbitrable. *Re Abitibi-Price and Canadian Paperworkers Union, Local 134; group grievance*, September 9, 1981. Majority: Gorsky, Porter; dissent: Mazur — 19 pages. (1)\*

Reopening grievance: union withdrawing grievance but attempting to reopen after appeal to membership — no unilateral right to reopen; grievance dismissed. *Re Canadian Car Division, Hawker Siddeley Canada Limited, and United Automobile Workers of America, Local 1075; Simeoni grievance*, September 1, 1981. O'Shea — 21 pages. (2)

#### Bargaining Unit

Medical laboratory assistants: legitimate removal of job to another department — union jurisdiction only when functions performed in medical laboratory; grievance dismissed. *Re Cambridge Memorial Hospital and Ontario Public Service Employees Union; policy grievance*, September 25, 1981. Majority: Saltman, Brady; dissent: Cochrane — 8 pages. (3)

**Bereavement Leave**

Bereavement coinciding with vacation period — no entitlement; grievance dismissed. *Re City of Toronto, Corporation of, and Toronto Civic Employees Union, Local 43, Canadian Union of Public Employees; McLennan grievance*, September 29, 1981. Majority: Beatty, Milks; dissent: Tate — 11 pages. (4)\*

**Classification**

Charge hands — the grievor not supervising other tradespersons with overall responsibility for them; grievance dismissed. *Re Victoria Hospital Corporation and Service Employees International Union, Local 220; Robinson grievance*, September 21, 1981. Majority: Ianni, Budd; dissent: Switzman — 10 pages. (5)

Duties and responsibilities more similar to higher grade core functions; grievance allowed. *Re Georgian College of Applied Arts and Technology and Ontario Public Service Employees Union; Hicks grievance*, August 31, 1981. O'Shea, McIntyre, Hubert — 22 pages. (6)

Overlap of duties — grievors not performing prime and substantial duties of higher rated classification; grievances dismissed. *Re Foster Wheeler Limited and United Steelworkers of America, Local 6519; Kiernan and Coco grievances*, September 22, 1981. H.D. Brown — 11 pages. (7)

**Collective Agreement**

Retroactivity of responsibility allowance — retroactive entitlement from date collective agreement effective; grievance allowed. *Re Bestview Holdings Limited and Ontario Nurses' Association; group grievance*, July 8, 1981. Abbott, Beaulieu, Perkins — 17 pages. (8)\*

**Damages**

Improper promotion — night shift premium paid in former job serving to reduce damages. *Re Great Atlantic and Pacific Company of Canada and Canadian Food and Allied Workers' Union; Smith grievance*, August 11, 1981. Majority: Rayner, Simon; concur in part: Dinsdale — 10 pages. (9)\*

**Demotion**

Absenteeism — disciplinary demotion not appropriate; reinstatement with warning substituted. *Re Rayco Stamping Products Limited and Christian Labour Association of Canada; Schwass grievance*, August 31, 1981. Hinnegan — 11 pages. (10)\*†

Criminal charge pending — bus driver's work of a high profile nature; employer establishing just cause to refuse to reinstate grievor to his former position; grievance denied. *Re Cornwall, Corporation of City of, and Amalgamated Transit Union Division 946; McNish grievance*, September 8, 1981. O'Shea — 10 pages. (11)†

School closing — junior employee retaining higher position; no explanation by employer; grievance allowed. *Re CFB Kingston Board of Education and Ontario Public School Men Teachers' Federation; Mosier grievance*, September 18, 1981. Carter, Miniuk, Posen — 7 pages. (12)

**Discharge**

Absence for more than three consecutive days — lack of verifiable illness or reasonable justification; grievance dismissed. *Re Robertshaw Controls (Canada) Limited and United Electrical, Radio and Machine Workers of America, Local 512; Louca grievance*, September 1, 1981. H.D. Brown — 12 pages. (13)

Absence from work without notice — lack of reasonable *bona fide* excuse; grievance denied. *Re Oaklands Regional Centre and Ontario Public Service Employees Union; Drysdale grievance*, September 3, 1981. Majority: Carter, Noonan; dissent: Beaulieu — 12 pages. (14)

Absent four days due to excessive alcohol consumption: poor attendance and disciplinary record — rehabilitation unlikely; grievance dismissed. *Re Alcan Canada Products Limited and United Steelworkers of America, Local 8754; Purcell grievance*, September 9, 1981. Brunner — 21 pages. (15)

Absenteeism — company failed to show grievor unable to attend regularly in the future; grievor conditionally reinstated. *Re Pazner Scrap Metals Company Limited and Teamsters, Chauffeurs, Warehousemen, and Helpers Union, Local 880; Standon grievance*, September 25, 1981. Brent — 11 pages. (16)

Absence while serving jail sentence — discipline not excessive for seven-year employee convicted of serious offence; grievance dismissed. *Re Stelco Inc., Hilton Works, and United Steelworkers of America, Local 1005; Platsko grievance*, August 20, 1981. Majority: Welling, Keenan; dissent: Davidson — 16 pages. (17)\*

Assault on foreman during strike — grievances dismissed. *Re Essex Terminal Railway Company and Teamsters, Chauffeurs, Warehousemen and Helpers Union, Local 880; Drake and McRae grievances*, September 28, 1981. Majority: H.D. Brown, Burnell; dissent: McRae — 31 pages. (18)

Consumption of alcohol while on job — incident viewed as a momentary aberration; reinstatement without compensation. *Re National Grocers Company Limited and Retail, Wholesale and Department Store Union, Local 414; MacNaughton grievance*, September 3, 1981. Kennedy, Stringer, Spaxman — 22 pages. (19)

Culminating incident: attempted theft — prior record of fighting, substandard work and disturbance to other employees; grievance dismissed. *Re Otis Pants Limited and Amalgamated Clothing and Textile Workers Union, Toronto Joint Board; Marques grievance*, August 31, 1981. Swinton — 18 pages. (20)

Culminating incident: insubordination alleged — refusal to sign agreement relating to future conduct not justifying discipline; grievance allowed. *Re National-Standard Company of Canada Limited and United Automobile Workers of America, Local 1917; Alfred grievance*, August 5, 1981. Palmer — 7 pages. (21)

Dishonesty: attempt to obtain payment from company under false pretences — restoring a viable employment relationship not necessary as grievor would leave job upon completing his education; grievance dismissed. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 414; Traverso grievance*, August 17, 1981. Majority: Kennedy, White; dissent: Spaxman — 15 pages. (22)

Dishonesty: time card violation — no mitigating circumstances; grievances dismissed. *Re Steel Company of Canada Limited, (Hilton Works), and United Steelworkers of America, Local 1005; Rogers and Olejnik grievances*, September 21, 1981. Burkett, Shields, Marshall — 24 pages. (23)

Disruptive behaviour — grievor using loud, abusive and threatening language towards his co-workers and his immediate supervisor; employer not required to deliver reasons in writing for the dismissal; grievance dismissed. *Re Canadian Union of Operating Engineers and General Workers and Office and Professional Employees International Union, Local 343; Chyczij grievance*, August 11, 1981. Majority: Rayner, Robinet; dissent: Brown — 30 pages. (24)

Drinking on company property alleged — grievor consumed two beers with his lunch; no posted company rules; discharge not warranted; lay-off substituted. *Re Thunderbrick Limited and Labourers' International Union of North America, Local 607; Cicinski grievance*, September 1, 1981. Bicknell, Hebert, McMullen — 11 pages. (25)

Failure to pick up registered mail — specific instructions not given; no wilful disobedience; one-month suspension substituted for discharge. *Re Brampton, Corporation of City of, and Canadian Union of Public Employees, Local 831; Sperl grievance*, September 16, 1981. Shime, Filion, Kirkby — 7 pages. (26)

Failure to report for work without notifying the company — no justifiable reason for failure to notify the company; grievance dismissed. *Re United-Carr Division of TRW Canada Limited and United Automobile Workers, Local 397; Balfour grievance*, September 3, 1981. Weatherill — 8 pages. (27)

Falsification on employment application — grievor failing to disclose a criminal record and falsifying his employment record on his application for employment; grievance dismissed. *Re Rio Algom Limited and United Steelworkers of America, Local 5417; Stewart grievance*, September 22, 1981. O'Shea — 20 pages. (28)

Fighting with another employee — grievor initiated the fight, but other employee bearing substantial portion of the blame; substitution of thirty-day suspension. *Re P.H.A. Industries Limited and Canadian Paperworkers Union, Local 1144; Ancevski grievance*, September 3, 1981. Brunner, Decker, Weisbach — 7 pages. (29)

Insubordination — acting against wishes or policy of management by bringing marijuana to work; grievance dismissed. *Re Automotive Hardware Limited and United Steelworkers of America, Local 7105; Rivet grievance*, September 17, 1981. Majority: O'Shea, Beresford; dissent: Guest — 20 pages. (30)

Insubordination — precipitate action by employer; reinstatement with partial compensation. *Re Arnrior, Corporation of Town of, and International Union of Operating Engineers, Local 793; McCorkell grievance*, August 7, 1981. Bernstein — 10 pages. (31)†

Leave of absence to serve jail sentence not granted — absence would not have interfered with manning needs; grievance allowed. *Re Borough of York, Corporation of, and York Professional Fire Fighters Association, Local 411 of International Association of Fire Fighters; Antochiwi grievance*, September 21, 1981. Beatty — 8 pages. (32)\*

Moonlighting; grievor taking outside employment without approval — employment terminated by operation of collective agreement; grievance dismissed. *Re Leigh Instruments Limited and United Automobile Workers of America, Local 1828; Kelly grievance*, September 2, 1981. Majority: O'Shea, Boehmer; dissent: Rudrum — 16 pages. (33)

Setting of fire attributed to mental illness — risk of recurrence real; company under duty to safeguard other employees; grievance denied. *Re TRW Canada Limited, Thompson Products Division, and Thompson Products Employees' Association; Pidgen grievance*, September 14, 1981. Majority: Dunn, Storie; dissent: Tate — 14 pages. (34)

Sleeping — culminating incident; poor work record; grievance dismissed. *Re Toronto Transit Commission and Amalgamated Transit Union, Local 113; Freihaut grievance*, August 19, 1981. Majority: Little, Caplan; dissent: Beaulieu; addendum: Caplan — 30 pages. (35)

Temporary absence programme: employer refusing to participate — test of "reasonableness" not applicable; decision not reviewable unless arbitrary, discriminatory or in bad faith. *Re Stelco Inc., Hilton Works, and United Steelworkers of America, Local 1005; Platsko grievance*. See (17), *supra*. (36)\*

Theft — grievor in a position of trust; grievance dismissed. *Re Gordons Markets and Canadian Food and Allied Workers, Locals 175 and 633; Reid grievance*, August 11, 1981. Majority: Rayner, Sargeant; dissent: Tait — 12 pages. (37)

Theft and sale of company property — circumstantial evidence of intent; grievances dismissed. *Re Canadian National Railways; Mason and Bent grievances*, September 18, 1981. Majority: R.J. Roberts, Milley; dissent: Switzman — 13 pages. (38)

Theft of company property — grievor in a position handling cash; not appropriate circumstances for mitigation of penalty; grievance dismissed. *Re Dufferin Area Hospital and Service Employees Union, Local 204; MacDiarmid grievance*, September 14, 1981. Eaton — 25 pages. (39)†

Theft of company property alleged — intent to steal not established; grievance allowed. *Re TRW Canada Limited (Thompson Products Division) and Thompson Products Employees' Association; Loewen grievance*, July 27, 1981. Majority: Beck, Tate; dissent: Sanderson — 20 pages. (40)

Work performance: inability to accept subordinate role causing several incidents — context of patient care prevailing over long service; grievance dismissed. *Re St. Joseph's General Hospital and Service Employees' International Union, Local 268; Baxter grievance*, September 8, 1981. Hinnegan — 9 pages. (41)

Work performance unsatisfactory — culminating incident alleged; essence of grievor's poor performance failure to properly supervise other employees; demotion from position of supervision more appropriate. *Re Westfair Foods Limited and Union of Canadian Retail Employees, Local 1000; Stockla grievance*, August 24, 1981. Majority: Rubenstein, Robinson; dissent: Piercy — 27 pages. (42)

#### **Discipline**

Breach of company rule and insubordination: grievor refusing to comply with company rules regarding time card procedures — "work now grieve later" principle applied; grievance dismissed. *Re John T. Hepburn Limited and United Steelworkers of America, Local 3335; Kalis grievance*, September 24, 1981. Majority: Hinnegan, Bertuzzi; dissent: Falkowski — 10 pages. (43)

Breach of safety regulations and loitering — breach of safety regulations not established; grievance allowed in part. *Re Stewart-Warner Corporation of Canada Limited, Belleville, and United Automobile Workers, Local 1538; suspension grievance*, September 14, 1981. Simmons — 5 pages. (44)

Counselling of illegal strike alleged — grievor's union office not relevant; grievance allowed. *Re CN/CP Telecommunications and Canadian Association of Communications and Allied Workers; Henderson grievance*, September 4, 1981. Majority: Beatty, Robinson; dissent: Milley — 22 pages. (45)\*

Culminating incident; leaving plant without permission; grievance denied. *Re Allied Chemical Limited and United Automobile Workers of America, Local 89; Harris grievance*, August 26, 1981. Kruger — 7 pages. (46)

Insubordination — abusive language and refusal to answer proper question; grievance dismissed. *Re Belkin Paperboard and Canadian Paperworkers Union, Local 1112; Barnes grievance*, September 10, 1981. O'Shea, Quaife, Billings — 14 pages. (47)

Insubordination — failing to follow directions on use of safety gear; disciplinary letter altered but suspension upheld. *Re Burns Meats Limited and United Food and Commercial Workers International Union, Local 139; Zmija grievance*, August 20, 1981. McLaren — 7 pages. (48)†

Insubordination — leaving assigned area and using abusive behaviour towards supervisor; grievance dismissed. *Re Wyeth Limited and Energy Chemical Workers Union, Local 368; Dirrhami grievance*, September 4, 1981. Hinnegan — 6 pages. (49)†

Insubordination — three-day suspension not unreasonable; grievance dismissed. *Re Campeau Corporation and Canadian Construction, Building Maintenance and General Workers' Union; Manfredi grievance*, June 30, 1981. Bernstein — 18 pages. (50)†

Insubordination: refusal to follow supervisor's order to obtain medical certificate — impossibility of performance not established; grievance denied. *Re Hendrickson Manufacturing (Canada) Limited and United Steelworkers of America, Local 8773; Fidom grievance*, September 3, 1981. Brunner — 7 pages. (51)\*

Lateness — three-day suspension reduced to one-day suspension. *Re FBM Distillery Company Limited and Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers, Local Union 304; Perry grievance*, September 25, 1981. Saltman — 5 pages. (52)

Leaving work station without permission of supervisor — just cause in one instance but not in the other; grievances allowed in part. *Re Westinghouse Canada Limited and United Electrical, Radio and Machine Workers of America, Local 504; Guthro grievances*, September 11, 1981. Majority: H.D. Brown, Bosnich; dissent: Kacur — 14 pages. (53)

Refusal to permit employee to work after late arrival — decision reasonable and non-disciplinary; grievance dismissed. *Re Falconbridge Nickel Mines Limited and Sudbury Mine, Mill and Smelter Workers Union, Local 598; Cameron grievance*, August 25, 1981. Teplitsky — 5 pages. (54)

#### **Estoppel**

Statements made during negotiations — representations not unequivocal; estoppel not applicable. *Re Canteen of Canada Limited (Ontario) and Retail, Commercial and Industrial Union, Local 206; union grievance*, September 8, 1981. Majority: Gorsky, Peters; dissent: Neilson — 29 pages. (55)\*

**Grievance Procedure**

Timeliness — time running from date of lay-off not date of notice of lay-off; employer waiving time limit; alternatively, extension appropriate. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 414; group grievance*, July 22, 1981. Majority: McLaren, Spaxman; dissent: Sergeant — 14 pages. (56)\*

**Holidays**

Floater holiday — employer not entitled to schedule holiday for non-working day; grievance allowed. *Re Canteen of Canada Limited (Ontario) and Retail, Commercial and Industrial Union, Local 206; union grievance*. See (55), *supra*. (57)\*

**Holiday Pay**

Qualifying days — strike not altering scheduled days; grievance dismissed. *Re Abitibi-Price and Canadian Paperworkers Union, Local 134; group grievance*, September 9, 1981. See (1), *supra*. (58)\*

Qualifying days: leaving early on shift prior to holiday because of alleged illness — failure to seek permission or medical evidence; grievance dismissed. *Re Bate Chemical Company Limited and United Steelworkers of America, Goldrich grievance*, July 6, 1981. Majority: Brunner, Denson; dissent: Robinson — 6 pages. (59)

**Hours of Work**

Offset time for Saturday work — *status quo* maintained by agreement; grievance allowed. *Re Brant Community Credit Union and Union of Bank Employees, Local 2104; Tavernese grievance*, August 11, 1981. Majority: Rayner, Hoover; dissent in part: Warner — 7 pages. (60)

Overtime assignment in another city: required to stay overnight to await parts — on duty and entitled to pay for sleep and meal times; grievances allowed. *Re Hamilton Street Railway Company and Amalgamated Transit Union, Local 107; Bentley and Sari grievances*, June 25, 1981. Majority: Shime, Bosnich; dissent: Billings — 10 pages. (61)\*

**Illness**

Refusal to re-employ; high risk of recurrence of back problems — grievor to be reinstated for one month pending approval of Workmen's Compensation Board. *Re Dahlstrom Canada Limited and United Steelworkers of America; De Caria grievance*, August 31, 1981. Kruger — 16 pages. (62)

**Interest Arbitration**

Failure to implement award — direction to implement; grievance allowed. *Re Heritage House Rest Home and Christian Labour Association of Canada; union grievance*, September 21, 1981. Adamson — 7 pages. (63)†

**Job Evaluation**

Assessment of appropriate rate following introduction of new equipment and reduction in manning — interest arbitration method of comparing similar operations preferred to job evaluation study measuring changes in job worth. *Re Photo Engravers and Electrotypers Limited and Toronto Printing Pressmen and Assistants' Union, No. 10 (Pressmen); rates grievance*, September 21, 1981. Majority: Brandt, Licastro; dissent: Dinsdale — 38 pages. (64)

Mental development factor — requirements of job not justifying higher factor; grievance dismissed. *Re Northern Telecom Canada Limited and United Automobile Workers, Local 1535 (Bramalea); Hardcastle grievance*, June 19, 1981. Simmons — 7 pages. (65)

**Job Posting**

Failure to post job — employer permitted to transfer employees within job area; grievance denied. *Re Electrohome Limited, Kitchener-Waterloo, and International Brotherhood of Electrical Workers, Local 2345; Haas grievance*, September 15, 1981. O'Connor — 4 pages. (66)†

**Job Vacancy**

Existence of vacancy: vacancy any unoccupied position that company intends to fill — vacancies to be filled by honouring request for transfer of senior qualified employee. *Re Air Canada and Canadian Air Line Employees' Association; Bowles grievance*, August 31, 1981. Burkett — 15 pages. (67)

**Lay-off**

Qualifications — more than familiarization period required; grievance dismissed. *Re Seiberling Canada Inc. and United Rubber, Cork, Linoleum and Plastic Workers of America, Local 118; Mansfield grievance*, September 16, 1981. Kennedy — 9 pages. (68)

"Reduction of business" — not established; grievance allowed. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 414; group grievance*. See (56), *supra*. (69)\*

Shut-down of surgical unit on short notice — lay-off resulting; grievance allowed. *Re Sudbury General Hospital of the Immaculate Heart of Mary and Ontario Nurses' Association, Local 13; group grievance*, June 30, 1981. Majority: Lunney, Beaulieu; dissent: Hawn — 18 pages. (70)

**Leave of Absence**

Request for half-time leave of absence — grievor to teach from September to January inclusive, which is equivalent to four periods per day for the full teaching year; employer's interpretation of the article too restrictive; grievance allowed. *Re Sudbury Board of Education and Branch Affiliates Representing Members of Ontario Secondary School Teachers' Federation and Members of L'Association Des Enseignants Franco-Ontariens Employed by Sudbury Board of Education; Lockerby Branch Affiliate grievance*, August 28, 1981. Majority: Brunner, Cazabon; dissent: Buckland — 10 pages. (71)

**Overtime**

Cancellation of scheduled overtime due to supervisory void — employer acting reasonably in removing supervisor for poor work; grievances dismissed. *Re Metropolitan Toronto, Municipality of, and Metropolitan Toronto Civic Employees Union, Local 43; Clarke et al grievances*, September 4, 1981. Davis — 9 pages. (72)†

Computation of total overtime worked — overtime work on statutory holidays is independent of normal overtime work and therefore not to be included in calculation of total overtime hours worked in a week; grievance denied.

*Re Canada Cup and Energy and Chemical Workers Union, Local 222; Miller et al grievance*, September 17, 1981. Eaton — 11 pages. (73)†

Distribution within classification — triggered only when employees sign availability list; grievance dismissed. *Re Fiberglas Canada Inc. and Amalgamated Clothing and Textile Workers Union, Local 1305; Dunbar grievance*, July 7, 1981. McLaren — 9 pages. (74)

Emergency — scheduling provisions apply only to anticipated overtime; grievance dismissed. *Re Reid Dominion Packaging Limited and Teamsters Local Union 879; Boehm grievance*, August 31, 1981. Jolliffe — 17 pages. (75)\*†

Entitlement — company failing to offer second overtime shift to available employees of the job classification before offering overtime outside of the job classification; grievance allowed. *Re Babcock and Wilcox Canada Limited and United Steelworkers of America, Local 2859; Labram grievance*, August 11, 1981. Majority: Rayner, Lloyd; dissent: Wright — 9 pages. (76)

Minimum guarantee of two hours pay at overtime rate — not referring to overtime which is a continuation of regular work period; grievance denied. *Re Borough of York, Corporation of, and Canadian Union of Public Employees, Local 10, Borough of York Employees; union grievance*, September 25, 1981. Black — 7 pages. (77)†

Probationary employees — employer permitted to make assignments to probationary employees in bargaining unit; grievances dismissed. *Re Knechtel Furniture Limited and International Woodworkers of America, Local 2-500; Girodat and Lerch grievances*, September 17, 1981. Adams, Crockford, Smiley — 5 pages. (78)

Remedy for improper distribution — error to be remedied partially by "in kind" work and partially by compensation within two months. *Re Bell Canada and Communications Workers of Canada; Adamson grievance*, September 16, 1981. Majority: Shime, Churchill-Smith; dissent: Beaulieu — 7 pages. (79)\*

Scheduling — rescheduling of work to avoid overtime proper; grievance dismissed. *Re Falconbridge Nickel Mines Limited and Sudbury Mine, Mill and Smelter Workers Union, Local 598; Atkinson grievance*, September 28, 1981. H.D. Brown — 12 pages. (80)\*

**Premium Pay**

"Continental work week": overtime paid only when more than five days within calendar week worked — payable when more than five consecutive days worked; grievance allowed. *Re Sunny Orange Canada (1966) Limited and United Food and Commercial Workers International Union, Local 114-3P; policy grievance*, July 24, 1981. McLaren — 8 pages. (81)\*

Responsibility premium — test is objective responsibility not formal designation; grievance allowed. *Re Chedoke-McMaster Hospital and Ontario Nurses' Association; grievors not named*, September 29, 1981. Majority: H.D. Brown, Symes; dissent: Dixon — 19 pages. (82)\*

**Probationary Employees**

Calculation of period: three shifts short of qualifying period as temporary employee — must work entire probationary period; grievance dismissed. *Re Molson's Brewery and Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers, Local 304; Gillan grievance*, July 15, 1981. Beck — 7 pages. (83)\*

**Promotion**

Non-competitive seniority provision — grievor sufficiently qualified; grievance allowed. *Re Ottawa, Corporation of City of, and Canadian Union of Public Employees, Local 503; Stanton grievance*, August 11, 1981. Majority: Roach, Burrows; dissent: Gladu — 14 pages. (84)

Qualifications — company to consider both ability and seniority; grievance dismissed. *Re Dominion Stores Limited and Retail Clerks' Union, Local 206; Irvine grievance*, August 20, 1981. Majority: Rayner, White; dissent: Peters — 12 pages. (85)

Qualifications — grievor having poorer work record than the incumbent; grievance dismissed. *Re Thunder Bay, Corporation of City of, and Canadian Union of Public Employees, Local 87; Kuzik grievance*, August 31, 1981. Majority: Duchesneau-McLachlan, Holt; dissent: Simpson — 8 pages. (86)

Qualifications — grievor lacking knowledge or experience to meet all requirements; grievance dismissed. *Re Union Carbide Canada Limited and Energy and Chemical Workers Union, Local 593; Henry grievance*, September 4, 1981. Majority: Weatherill, Roberts; dissent: Edwards — 9 pages. (87)

Qualifications — grievor previously occupied position for which bids were called; performance at that time below average; grievance denied. *Re Selkirk Metalbestos Division, Wallace-Murray Canada Limited, and Sheet Metal Workers International Association, Local 540; Perrin grievance*, September 24, 1981. Delisle — 9 pages. (88)†

Qualifications — successful applicant possessing superior qualifications; grievance denied. *Re Haley Industries Limited and United Steelworkers of America, Local 4820; Moore grievance*, July 17, 1981. Majority: Palmer, Churchill-Smith; dissent: Taylor — 7 pages. (89)

Qualifications; grievor not enrolled in optional in-service course — not reasonable requirement under posting; grievance allowed. *Re Casselholme Home for the Aged Board of Management, Nipissing East District, and Canadian Union of Public Employees, Local 146; South grievance*, September 21, 1981. Majority: H.D. Brown, Belanger; dissent: Butler — 21 pages. (90)

Qualifications: grievor unable to perform substantial portion of important functions — no obligation to train; grievance dismissed. *Re Byron Jackson, Division Borg-Warner (Canada) Limited, and International Association of Machinists and Aerospace Workers, Local 235; Iannone grievance*, September 2, 1981. O'Shea — 14 pages. (91)

Qualifications: prior experience a relevant consideration; grievance dismissed. *Re Canadian Union of Public Employees (as employer) and Toronto Civic Employees, Local 43; union grievance*, August 27, 1981. Teplitsky — 4 pages. (92)

#### **Recall**

Temporary employee hired to replace regular employee while grievor on lay-off — no violation of collective agreement; grievance denied. *Re Union Gas Limited and Energy and Chemical Workers Union, Local 938; Honsinger grievance*, September 14, 1981. Majority: Hinngan, Drmaj; dissent: Dawe — 7 pages. (93)

#### **Scheduling of Work**

Change of schedule untimely — previous schedule applies; grievor entitled to overtime rate. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 414; Zukiel grievance*, September 18, 1981. Saltman, Sargeant, Spaxman — 7 pages. (94)

#### **Sick Pay**

Abnormal disability associated with pregnancy — disability ended by time benefits terminated; grievance dismissed. *Re Certified Automotive Products (Central) Limited and United Steelworkers of America, Local 14831; La Gamba grievance*, September 16, 1981. Kennedy — 9 pages. (95)

#### **Transfer**

Qualifications — seniority governs only where qualifications equal; grievance dismissed. *Re Board of Education for Borough of York and Canadian Union of Public Employees, Local 1749; deJager grievance*, August 24, 1981. Jolliffe — 18 pages. (96)†

Seniority preference — extent of entitlement defined.

*Re Dresser Industries Canada Limited, Industrial Products Division Cambridge (Galt) Plant, and United Steelworkers of America, Local 5475; union grievance*, September 25, 1981. Black — 11 pages. (97)

#### **Union Rights**

Remuneration for attending negotiations — extending to conciliation meetings; grievance allowed. *Re Lady Dunn General Hospital, Wawa, Ontario, and Service Employees Union, Local 268; Spekking grievance*, August 21, 1981. Majority: Palmer, Kozak; dissent: Noble — 6 pages. (98)

#### **Union Security**

Casual and part-time employees and temporary transferees not part of bargaining unit; all other employees to have dues deducted; grievance allowed in part. *Re Falconbridge Nickel Mines Limited and United Steelworkers of America; union grievance*, August 13, 1981. Majority: Palmer, Rouleau; dissent in part: Valin; addendum: Rouleau — 19 pages. (99)

#### **Vacations**

Scheduling: employee transferred after selecting date — company has unfettered right to determine available dates in new unit; grievance dismissed. *Re CN/CP Telecommunications and Canadian Telecommunications Union (Division One of United Telegraph Workers); Dewit grievance*, September 16, 1981. Beatty — 13 pages. (100)

#### **Wages**

Commissions: employer refusing to pay commission to driver salesman on "completed net sales" until account collected — commission payable when sale completed; grievance dismissed. *Re Rudolph's Specialty Bakeries Limited and Retail, Wholesale and Department Store Union; policy grievance*, September 10, 1981. Majority: O'Shea, Addario; dissent: Dahmer — 18 pages. (101)

Co-operative wage study — taking effect on completion of study rather than retroactively; grievance dismissed.

*Re Eastern Steelcasting (Division of Ivaco Inc.) and United Steelworkers of America, Local 8794; group grievance*, August 24, 1981. Abbott — 14 pages. (102)

Educational increment — no entitlement for casual part-time nurse; grievance dismissed. *Re Leamington District Memorial Hospital and Ontario Nurses' Association; Lane grievance*, September 15, 1981. Majority: H.D. Brown, Bartlet; dissent: Symes — 18 pages. (103)

Performance rating — grievor not maintaining her performance level disentitling her to the increase; grievance dismissed. *Re Bank of Montreal Branch, 1101 University Avenue, Windsor, Ontario, and Union of Bank Employees (Ontario), Local 2104; Parozanin grievance*, August 21, 1981. Majority: Palmer, Kavanaugh; dissent: Vellinga — 7 pages. (104)

Settlement of discharge — grievor clearly on company's payroll on day for which he was requesting retroactive pay; grievance allowed. *Re Bell Canada and Communications Workers of Canada; Linder grievance*, June 9, 1981. Beck, Healy, Robinson — 9 pages. (105)

**Welfare Plans**

Bankruptcy of insurer — employer having obligation to provide benefits in collective agreement; grievance allowed. *Re Canadian Car Division, Hawker Siddeley Canada Limited, and United Automobile Workers of America, Local 1075; Nakonechny grievance*, September 25, 1981. Hinnegan — 11 pages. (106)\*

Sporadic work during winter lay-off forming sequence of recalls and lay-offs within collective agreement — employer obligated to pay benefit premiums. *Re Champlain Ready Mix Concrete Limited and Teamsters' Local Union 230; group grievance*, September 25, 1981. Majority: Betcherman, Beaulieu; dissent: White — 9 pages. (107)

**Work Assignment**

Part-time employees of one classification working on holiday — not replacements for preferred classification; grievance dismissed. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 414; union grievance*, September 1, 1981. Majority: Brunner, Sargeant; dissent: Spaxman — 6 pages. (108)

Relief work — more senior employee not entitled; grievance dismissed. *Re Canadian National Railway Company, Telecommunications Division, and Canadian Telecommunications Division of Canadian Brotherhood of Railway, Transport and General Workers; Thivierge grievance*, June 10, 1981. Beck — 11 pages. (109)

**Work Clothing**

Employer required to provide working clothes suitable for the nature of work performed under terms of collective agreement; grievance allowed. *Re Becker Milk Company and Teamsters Local 647; Lewis grievance*, September 15, 1981. Teplitsky — 5 pages. (110)

The following awards in interest arbitrations under *The Hospital Labour Disputes Arbitration Act* were filed with the Office of Arbitration during the month of September, 1981.

*Belleville General Hospital and Canadian Union of Operating Engineers and General Workers, Local 101, Samuels, Harrison; dissent: Kort* — 16 pages.

*Heritage Nursing Home Limited and Ontario Nurses' Association (full-time and part-time)*, Saltman, Mayne; addendum: Mayne; dissent: Perkins — 85 pages.

*Lincoln Place Nursing Home and Ontario Nurses' Association*, (interim award), Saltman, Brady, Switzman — 3 pages.

*Public General Hospital Society of Chatham and Service Employees' Union, Local 210, Verity, Bounsell; addendum: Bounsell; partial dissent to follow: Wright* — 16 pages.

*St. Mary's General Hospital and London and District Service Workers' Union, Local 220, (interim award)*, Saltman, Filion, Switzman — 3 pages.

*Sarnia, Corporation of City of, (Marshall Gowland Manor) and Ontario Nurses' Association (full-time and part-time)*, Brunner, Walsh; addendum: Walsh; dissent: Drmaj — 15 pages.

*Winchester and District Memorial Hospital and Canadian Union of Public Employees, Local 3000, (full-time clerical and technical unit)*, Abbott, Mustard, Robbins — 4 pages.

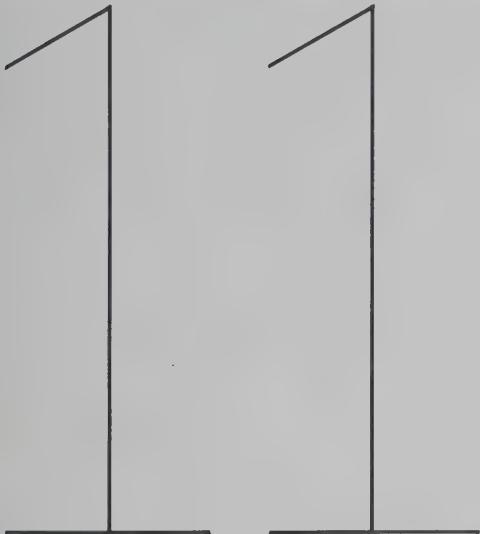
The awards may be seen at the Office of Arbitration, 400 University Avenue, 6th Floor, Toronto. Copies of awards may be obtained for a fee of 50 cents per page. Orders will be filled on receipt of an application and a cheque or money order payable to the Treasurer of Ontario, for the applicable amount.

**Filing Awards**

The attention of chairmen of boards of arbitration and sole arbitrators is drawn to the regulations under *The Labour Relations Act* which require every arbitrator to file a copy of his award with the Office of Arbitration within ten days of issuing such award.

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# Monthly Bulletin



Ontario Ministry of Labour

Hon. Robert Elgie, M.D., Minister  
T.E. Armstrong, QC, Deputy MinisterOffice of Arbitration  
400 University Avenue, 6th Floor  
Toronto, Ontario  
M7A 1T7  
Tel. (416) 965-5669

Miss Jean M. Read, Director

January, 1982  
Volume 11, Number 10Published monthly by the  
Office of Arbitration as a service to  
persons involved in labour-management  
arbitrations.**Purchase of Awards**

Due to increasing demand for the supply of awards, immediate service can no longer be guaranteed. For quantities in excess of twenty pages, lead time of forty-eight hours should be allowed. Also, copies of awards dated prior to 1976, which must be retrieved from storage, cannot be supplied in less than one week.

All awards listed in the *Monthly Bulletin* may be reviewed at the Office of Arbitration, 400 University Avenue, 6th Floor, Toronto, Ontario, M7A 1T7. Copies may be purchased for a fee of 50¢ per page and orders will be filled upon receipt of a request and a cheque or money order payable to the Treasurer of Ontario, for the applicable amount.

**Appointment of Arbitrators**

Forms for requests for appointment of arbitrator under section 45 (formerly 37a) of *The Labour Relations Act* are available on request, from the Office of Arbitration.

**Approved Arbitrators**

The following persons have successfully completed the Ministry of Labour's 1981 Arbitrator Development Programme and have been added to the approved panel of arbitrators:

Mr. Albert Hearn, 5 Lejune Road, Agincourt, Ontario, M1T 2S6; telephone: (416) 293-4218

Professor Paula S. Knopf, Osgoode Hall Law School, York University, 4700 Keele Street, Downsview, Ontario, M3J 2R5; telephone: (416) 667-3985

Professor Graeme H. McKechnie, Department of Economics, S845 — Ross Building, York University, Downsview, Ontario, M3J 1P3; telephone: (416) 667-2362

The Office of Arbitration has been advised of the retirement of Mr. O.J. Godin of 6 Belanger Street, Verner, Ontario. At the request of Mr. Godin, his name has been removed from the panel of approved arbitrators.

Professor Ronald J. Delisle is presently on Sabbatical and unavailable to act as an arbitrator. Professor Delisle's name will therefore be removed from the list of arbitrators until his return in May, 1983.

## Grievance Arbitration

The following awards were filed with the Office of Arbitration during the month of October, 1981.

The summary was prepared at the Faculty of Law, Queen's University, under the supervision of C.G. Simmons, B.A., B.C.L., LL.M.; D.D. Carter, B.A., B.C.L., LL.B. and K.P. Swan, P.Eng., LL.B.

\* Indicates award to be reported in full or in part in *Labour Arbitration Cases*.

† Indicates award issued under section 45 (formerly 37a) of *The Labour Relations Act*.

## Arbitrability

Displacement of incumbent union — new union not deriving rights under former agreement; grievance not arbitrable.

*Re Somerville Belkin Industries Limited and Canadian Paperworkers Union, Local 311; Kearley grievance*, October 26, 1981. Majority: Hinnegan, Churchill-Smith; dissent: Weisbach — 19 pages. (1)

Job evaluation program — collective agreement silent; grievances not arbitrable. *Re Kitchener, Corporation of City of, and Kitchener City Hall Office, Clerical and Technical Staff, Local 791; several grievances*, October 28, 1981. Majority: H.D. Brown, Sims; dissent: Richardson — 13 pages. (2)

Settlement alleged — insufficient evidence of agreement; grievances arbitrable. *Re Carleton Roman Catholic Separate School Board and Ontario English Catholic Teachers' Association; Scully and Sally grievances*, October 5, 1981. Carter, Barber, Nelligan — 6 pages. (3)

Section 37a (now s. 45): grievance relating to collective agreement in force when section 37a proclaimed — section 37a procedure not applicable; objection upheld. *Re La Framboise Industrial Maintenance and Welding and International Association of Machinists and Aerospace Workers, Lodge 412; Trudell grievance*, October 7, 1981. Willes — 11 pages. (4)†

## Bargaining Unit

Unit supervisor position established — similar to bargaining unit position of head nurse; grievances allowed. *Re Kingston General Hospital, Board of Governors of, and Ontario Nurses' Association; two grievances*, October 19, 1981. Majority: Brent, Symes; dissent: Bently — 34 pages. (5)

## Bereavement Leave

Entitlement when on vacation — only entitled to leave from work; grievance dismissed. *Re Hamilton Civic Hospitals, Board of Directors of, and International Union of Operating Engineers (Stationary), Local 772; MacDonald grievance*, October 21, 1981. Majority: H.D. Brown, McKillop; dissent: Grigsby — 9 pages. (6)

## Classification

Higher rate paid secretly — not higher classification work as work not falling within higher classification; grievance dismissed. *Re Chateau Gardens (Oxford) Inc. and London and District Service Workers' Union, Local 220; policy grievance*, September 8, 1981. Majority: Palmer, Werry; dissent: Robinson — 13 pages. (7)

New classification created by merging two existing classifications — not done for reason of business efficiency; grievance allowed. *Re Hiram Walker and Sons Limited and United Automobile Workers of America, Local 2027; policy grievance*, October 16, 1981. Gorsky — 29 pages. (8)

## Contracting Out

Collective agreement silent on this issue — theory of residual management rights applying; grievance dismissed. *Re Lincoln Place Nursing Home and Service Employees Union, Local 204; policy grievance*, October 4, 1981. Majority: Rayner, Sargeant; dissent: Bounsell — 17 pages. (9)

## Cost of Living Allowance

Calculation — Union's grievance allowed in part.

*Re Affiliated Medical Products Limited and Amalgamated Clothing and Textile Workers Union, Local 1775; policy grievance*, October 5, 1981. Adams — 17 pages. (10)

## Damages

Interest and punitive damages — no jurisdiction to award either. *Re Resthaven Memorial Gardens and Highland Memory Gardens and Service Employees Union, Local 204; Fawcett and Robinson grievances*, October 13, 1981. Majority: H.D. Brown, Simon; dissent: Houck — 28 pages. (11)

## Discharge

Absence because of alcoholism — absence for seven consecutive days giving rise to automatic termination; excessive absenteeism; grievance denied. *Re Sudbury, Corporation of City of, and Canadian Union of Public Employees, Local 207; Mrs. O grievance*, September 29, 1981. Majority: P. Picher, Baldwin; dissent: Carriere — 33 pages. (12)\*

Absence of three days — justifiable delay in returning due to air controllers' strike and death of close friend; grievance allowed. *Re Cooper Energy Services Ltd. and International Association of Machinists and Aerospace Workers, Local 103; Reinecker grievance*, October 9, 1981. Davis — 10 pages. (13)†

Absence without leave: imprisonment following criminal conviction — not an appropriate case to substitute lesser penalty; grievance dismissed. *Re Falconbridge Nickel Mines Limited and Sudbury Mine, Mill and Smelter Workers' Union, Local 598; Gervais grievance*, September 8, 1981. Teplitsky, Valin, McIntyre — 7 pages. (14)

Absence without sufficient medical certificate — poor work record; progressive discipline applied; no reason to mitigate; grievance dismissed. *Re Ford Motor Company of Canada Limited and United Automobile Workers, Local 1520; Booth grievance*, August 27, 1981. Palmer — 8 pages. (15)

Absenteeism — grievor not attending hearing to rebut company's case; grievance dismissed. *Re Certified Automotive Products (Central) Limited and United Steelworkers of America, Local 14831; Palumbo grievance*, October 7, 1981. Palmer — 4 pages. (16)

Absenteeism — improving medical condition; grievance allowed. *Re Wyeth Ltd. and Energy and Chemical Workers Union, Local 368; Ganton grievance*, October 9, 1981. Brent — 12 pages. (17)

Absenteeism — work-related accident covered by Workmen's Compensation cannot justify termination; grievance allowed. *Re City of Toronto, Corporation of, and Metropolitan Toronto Civic Employees Union, Local 43; Jackson grievance*, October 1, 1981. Black — 10 pages. (18)†

Absenteeism for medical reasons: clear evidence that grievor's condition would deteriorate further making regular attendance unlikely — probationary reinstatement not feasible; grievance dismissed. *Re AEL Microtel Ltd. and International Union of Electrical, Radio and Machine Workers, Local 526; Fournier grievance*, October 26, 1981. Fraser — 18 pages. (19)†

Absenteeism: grievor unable to maintain reasonable attendance at work — failure to meet conditions of prior reinstatement; grievance denied. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 414; Varro grievance*, September 23, 1981. Majority: Kennedy, Sargeant; dissent: Spaxman — 8 pages. (20)

Alteration of grounds — employer limited to grounds put forward at time of discharge; suspension substituted. *Re General Motors of Canada Limited and United Automobile Workers of America, Local 303; Bishopric grievance*, August 26, 1981. Palmer — 6 pages. (21)\*

Criminal conviction: teacher's breach of statutory duty; no reason to interfere with discharge; grievance dismissed. *Re Etobicoke Board of Education and Ontario Secondary School Teachers' Federation, District 12; Koury grievance*, October 26, 1981. Swan, Posen, Baker — 15 pages. (22)\*

Culminating incident; incompetence and slowness alleged — incident not established; grievance allowed. *Re ITT Aimco Division and United Steelworkers of America, Local 7574; Balenovic grievance*, October 2, 1981. Abbott — 25 pages. (23)

Culminating incident: negligence causing serious injury to patient — poor record showing lack of self-control and patience; grievance dismissed. *Re St. Mary's Hospital, London, and London and District Service Workers' Union, Local 220; McKie grievance*, October 14, 1981. Majority: Palmer, Gilfillan; dissent: Robinson — 19 pages. (24)

Culminating incident: sleeping on job and careless work performance compounded by directing abusive language at supervisor — prior record showing inability to place responsibility to employer over personal interests; failure of progressive discipline; grievance dismissed.

*Re Metropolitan Toronto, Municipality of, and Metro Toronto Civic Employees' Union, Local 43; Cosgrove grievance*, October 9, 1981. Davis — 13 pages. (25)†

Drinking on Company property — drinking in car in parking lot on lunch break; discharge not appropriate in all of the circumstances; three-week suspension substituted. *Re Inter-City Truck Lines (Canada) Inc. and Teamsters Union, Local 938; Samms grievance*, July 7, 1981. McLaren, Fosbery, Marinelli — 7 pages. (26)

Drinking on Company time, absent from work place without leave and insubordination — discharge not appropriate in the circumstances; one-month suspension substituted.

*Re Hamilton Street Railway Company and Amalgamated Transit Union, Local 197; McIntyre and Procnunier grievances*; October 15, 1981. Majority: Palmer, Bosnich; dissent: Churchill-Smith — 9 pages. (27)

Drinking on the job — partial condonation and irregularity in discipline; separate grounds of insubordination not proven; suspension substituted. *Re Resthaven Memorial Gardens and Highland Memory Gardens and Service Employees Union, Local 204; Fawcett and Robinson grievances*. See (11), *supra*. (28)\*

Falsification of medical information on application for employment; relevance of information to job established — no condonation breaking link between falsification and discharge; grievance dismissed. *Re RCA Limited and International Union of Electrical, Radio and Machine Workers, Local 532; Juneau grievance*, October 9, 1981. Majority: McCamus, Murray; dissent: Knipfel — 21 pages. (29)

Falsification of work ticket alleged — grievor's explanation reasonable; grievance allowed. *Re Gould Manufacturing of Canada Limited and United Steelworkers of America, Local 5049; Colacci grievance*, September 30, 1981. Majority: Palmer, Urbanovics; dissent: Werner — 10 pages. (30)

Insubordinate attitude — four-month suspension substituted for discharge. *Re Cara Operations Limited and Hotel and Club Employees' Union, Local 299, Toronto, and Restaurant Employees' and Bartenders' International Union; Brown grievance*, October 15, 1981. Majority: Brunner, Tate; dissent: Dinsdale — 11 pages. (31)

Intoxication — grievor in unfit condition to drive company vehicle; grievance dismissed. *Re Brewers Warehousing Company Limited and United Brewers' Warehousing Workers' Provincial Board; Cooper grievance*, October 2, 1981. Curtis — 13 pages. (32)

Misrepresentation of medical condition on employment application — grievor still in probationary period; grievance denied. *Re Wardair Canada (1975) Limited and Canadian Air Line Flight Attendants Association; Trevena grievance*, September 21, 1981. Palmer — 14 pages. (33)

Sabotage alleged; insufficient proof; grievance allowed. *Re Inglis Limited and United Steelworkers of America, Local 2900; Onderkirk grievance*, September 23, 1981. Shime — 12 pages. (34)

Sleeping on shift and insubordination towards supervisor — emotional problems not justifying conduct; grievance dismissed. *Re Inco Metals Company, Unit of Inco Limited, and United Steelworkers of America, Local 6500; Pharand grievance*, October 13, 1981. Majority: Hinnegan, Kort; dissent: Guillet — 20 pages. (35)

Theft — offence established and required standard of proof met; grievance dismissed. *Re Dominion Stores Limited (North Bay, Cassells Street Store) and Retail, Wholesale and Department Store Union, Local 545; Gatien grievance*, September 9, 1981. Little, Prudhomme, White — 13 pages. (36)

Theft: property of unknown origin found near grievor — only witness in poor position for observation; reinstatement with compensation. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 414; Clausi grievance*, October 7, 1981. Houston — 12 pages. (37)†

Theft of company property — theft established; grievance dismissed. *Re Hamilton Street Railway Company and Amalgamated Transit Union, Local 107; Quesnelle grievance*, October 9, 1981. Majority: Palmer, Billings; dissent: Bosnich — 13 pages. (38)

Cheft: unauthorized possession of company property — intent to steal; grievance dismissed. *Re Canada Packers Inc. and United Food and Commercial Workers International Union, Local 114P; MacNeil grievance*, October 16, 1981. Majority: Palmer, Williamson; dissent: Davidson — 19 pages. (39)

Theft alleged: removal of garbage articles from premises of employer's client — articles not to be considered client's "property" — employer's rules not violated; grievance allowed. *Re Federated Building Maintenance Limited and Food and Service Workers of Canada; Resendes grievance*, October 8, 1981. Adamson — 15 pages. (40)†

Work performance poor — grievor unwilling to change his behaviour although given opportunities; grievance denied. *Re Babcock and Wilcox Canada Limited and United Steelworkers of America, Local 2859; Salazar grievance*, September 13, 1981. McLaren, Maguire, Wakely — 12 pages. (41)

#### Discipline

Absenteeism — declaration of Company's rights in absenteeism situations. *Re Certified Automotive Products (Central) Limited and United Steelworkers of America, Local 14831; Tobar grievance*, October 1, 1981. Shime — 2 pages. (42)

Altercation with foreman: abusive language and reckless acts — two-week suspension not excessive; grievance dismissed. *Re Firestone Canada Inc. and United Rubber, Cork, Linoleum & Plastic Workers of America, Local 113; Terry grievance*, October 13, 1981. Jolliffe — 20 pages. (43)†

Failure to produce medical certificate — past record of absenteeism justifying request for certificate; grievance dismissed. *Re Automotive Hardware Limited and United Steelworkers of America, Local 7105; Randazzo grievance*, October 2, 1981. Majority: Dunn, Churchill-Smith; dissent: Barr — 7 pages. (44)

Falsification of production records by incentive worker; grievance dismissed. *Re Gates Canada Inc. and United Rubber, Cork, Linoleum, and Plastic Workers of America, Local 733; McPherson grievance*, August 12, 1981. Majority: Rayner, Storie; dissent: Fuhrman — 10 pages. (45)

Horseplay causing serious injury to grievor — blameworthy conduct not proven; grievance allowed. *Re Decor Metal Products and United Automobile Workers of America, Local 1411; Hartley grievance*, October 19, 1981. Brent — 5 pages. (46)

Insubordination and assault on a foreman — grievor's union responsibilities not justifying conduct; grievance dismissed. *Re Ford Motor Company of Canada Limited and United Automobile Workers, Local 1520; Tuckey grievance*, September 2, 1981. Palmer — 15 pages. (47)

Insubordination: refusal to follow foreman's orders — grievor not providing valid excuse; grievance dismissed. *Re John T. Hepburn Limited and United Steelworkers of America, Local 3335; Fedoriw grievance*, October 19, 1981. H.D. Brown, Bertuzzi, Falkowski — 7 pages. (48)

Lateness — discipline report appropriate; grievance denied. *Re Stelco Inc. (Hilton Works) and United Steelworkers of America, Local 1005; Radassao grievance*, August 31, 1981. Majority: Welling, Shields; dissent: Marshall — 9 pages. (49)

Lateness: suspension for balance of day — no prior warning given to grievor; written warning substituted for suspension. *Re Blue Mountain Pottery, Division of Heritage Silversmiths Limited, and United Steelworkers of America; Jago grievance*, October 7, 1981. Brunner — 7 pages. (50)

Leaving early: alleged failure to notify employer of change of schedule in "flextime" work schedule — notice requirements satisfied; grievance allowed. *Re United Food and Commercial Workers International Union, Ontario Retail Council, and Office and Professional Employees International Union, Local 343; Hershkovitz grievance*, October 9, 1981. Houston — 11 pages. (51)†

Leaving work without a pass on a day when heat and humidity a problem in plant — employee's perception that Company had changed its procedures well founded; one-day suspension replaced by written disciplinary warning. *Re Canadian Appliance Manufacturing Company Limited and United Steelworkers of America, Local 3129; Braidwood grievance*, October 20, 1981. Knopf — 6 pages. (52)

Leaving work without a pass on a day when heat and humidity a problem in plant — employee's perception that Company had changed its procedures well founded; one-day suspension replaced by written disciplinary warning. *Re Canadian Appliance Manufacturing Company Limited and United Steelworkers of America, Local 3129; Hough grievance*, October 20, 1981. Knopf — 6 pages. (53)

Leaving work without a pass on a day when heat and humidity a problem in plant — employee's perception that Company had changed its procedures well founded; one-day suspension replaced by written disciplinary warning. *Re Canadian Appliance Manufacturing Company Limited and United Steelworkers of America, Local 3129; Said grievance*, October 20, 1981. Knopf — 6 pages. (54)

Offensive and obscene language directed at foreman — three-day suspension appropriate; grievance dismissed. *Re Fisher Gauge Limited and Fisher Gauge Employees Association; Leigh grievance*, October 2, 1981. Majority: Weatherill, Earle; dissent: Weir — 8 pages. (55)

Pilferage — rule not consistently enforced; grievance allowed. *Re Air Canada and International Association of Machinists and Aerospace Workers; Bellizzi grievance*, October 1, 1981. Shime — 4 pages. (56)\*

Refusal to perform tasks in another department while on overtime assignment — reasonable grounds for refusal; grievances allowed in part. *Re Westinghouse Canada Inc. and United Electrical, Radio and Machine Workers Union, Local 504; Bennicke et al. grievances*, October 15, 1981. Delisle — 8 pages. (57)†

Unco-operative attitude at safety meeting — penalty reduced to Step 1 reminder; grievance allowed. *Re Inco Metals Company and United Steelworkers of America; Smith grievance*, October 6, 1981. Palmer, Farrell, O'Neill — 11 pages. (58)\*

Work performance: failure to inspect causing faulty production — absence of monitors on shift a contributing factor; suspension reduced. *Re Domglas Inc. and United Glass and Ceramic Workers of North America, Local 260; Khanna grievance*, October 6, 1981. Egan — 6 pages. (59)†

Workmanship poor: two-day suspension — recent previous mistake; grievance dismissed. *Re Bell Canada and Communications Workers of Canada; Cunningham grievance*, October 1, 1981. Majority: Shime, Filion; dissent: Switzman — 7 pages. (60)

#### Employment Status

Full-time status claimed — grievor neither part-time nor sessional teaching appointee; grievance allowed. *Re Fanshawe College of Applied Arts and Technology, Board of Governors of, and Ontario Public Service Employees Union; Brocklebank grievance*, October 21, 1981. Brunner, Hubert, Cochrane — 20 pages. (61)

#### Estoppel

Acquiescence in practice of not paying shift premium — estoppel applying only until grievance brought; grievance allowed in part. *Re Centre Grey General Hospital and London District Service Workers' Union, Local 220; policy grievance*, October 13, 1981. Majority: O'Shea, Robbins; dissent: McSweeney — 23 pages. (62)

#### Grievance Procedure

Timeliness: delay in constituting board — no grounds for time extension; grievance dismissed. *Re Thomas Built Buses of Canada Limited and United Automobile Workers, Local 636; Papps grievance*, July 31, 1981. Majority: Weatherill, Filion; dissent: Blackburn — 7 pages. (63)

Timeliness: proper base date for salary rates disputed — continuous grievance; objection overruled. *Re London and District Association for the Mentally Retarded and Ontario Public Service Employees Union; Zeich grievance*, September 16, 1981. McLaren — 8 pages. (64)

Timeliness: Union seeking to grieve a job alleged to be part of bargaining unit work and not performed by the bargaining unit — situation existed since 1976; no reason to exercise statutory discretion to override mandatory time limits; grievance not arbitrable. *Re ITT Aimco Division (Mississauga Operations) and United Steelworkers of America, Local 7574; policy grievance*, October 21, 1981. Kennedy — 11 pages. (65)\*

Union policy grievance respecting lay-offs — grievances must be filed individually; policy grievance not arbitrable. *Re Amoco Fibres Ltd. and International Woodworkers of America, Local 2-600; union policy grievance*, September 28, 1981. Majority: O'Shea, McKeown; dissent: Smiley — 13 pages. (66)

#### Health and Safety

Refusal to work because grievor considering that he lacked skill to perform job safely — no entitlement to wages; grievance dismissed. *Re Galt-British Forge Company and United Steelworkers of America; Cole grievance*, September 24, 1981. Kruger — 7 pages. (67)\*

#### Holidays

"Statutory holidays" — term including all days recognized by employer as holidays; grievance allowed. *Re Dunbar Aluminum Foundry and United Automobile Workers of America, Local 1524; group grievance*, October 21, 1981. H.D. Brown, — 9 pages. (68)\*

#### Holiday Pay

Employees working twelve-hour shift — holiday to be based on twelve-hour rather than eight-hour shift; grievance allowed. *Re Nordfibre Company North Bay Plant and Canadian Paperworkers Union, Local 870; group grievance*, October 24, 1981. Duchesneau-McLachlan — 4 pages. (69)†

Qualifying shifts — not applying where employee works on holiday; grievances allowed. *Re Parry Sound District General Hospital and Ontario Nurses' Association; Davidson, Harrison, Stone grievances*, October 16, 1981. Brent, Beaulieu, O'Byrne; partial dissents: Beaulieu, O'Byrne — 19 pages. (70)

#### Job Evaluation

Entitlement to retroactive increase where unintentional reclassification; grievance allowed. *Re Ontario Hydro and Canadian Union of Public Employees, Local 1000; group grievance*, October 25, 1981. Majority: McCamus, McCullough; dissent: McCuaig — 23 pages. (71)

Evaluation of new positions with regard to educational requirements which had not been agreed upon — employer to consider equivalent academic qualification but not necessarily equivalent job experience and general knowledge. *Re London, Corporation of City of, and Canada Union of Public Employees, Local 101; union grievance*, October 21, 1981. Kennedy, Lewis, Noble — 12 pages. (72)

Gradual change in job — rise in "experience" factor justified; grievance allowed. *Re Westinghouse Canada Limited and United Electrical, Radio and Machine Workers of America, Local 504; Pickelman et al. grievance*, September 8, 1981. Majority: Palmer, Bosnich; dissent: Kacur — 17 pages. (73)

Upgrading sought — union failing to show that negotiated rate inadequate; grievance denied. *Re Canadian General Electric Company Limited and United Electrical, Radio and Machine Workers of America, Local 541; Shody et al grievance*, October 7, 1981. Black — 11 pages. (74)†

#### Job Posting

Duration of posting — notice required to be posted for full twenty-four hours of each of the specified days; grievance allowed. *Re Sudbury General Hospital of the Immaculate Heart of Mary and Canadian Union of Public Employees, Local 1023; individual grievance*, October 6, 1981. Majority: Betcherman, McVey; dissent: Murray — 7 pages. (75)\*

**Job Vacancy**

Existence of vacancy — no evidence of vacancy; grievance dismissed. *Re Barber Hydraulic Turbine Limited, Subsidiary of Marsh Engineering Limited, and United Steelworkers of America; Corey grievance*, June 5, 1981. J.L. Roberts, Ciolfi, Grace — 6 pages. (76)

Existence of vacancy — temporary job becoming full-time; grievance allowed. *Re Coca-Cola Limited and Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers; policy grievance*, October 14, 1981. H.D. Brown — 9 pages. (77)

**Lay-Off**

Bumping rights — senior employee unqualified for job done by junior employee; complaint re posting untimely; grievance dismissed. *Re T.I.W. Industries and United Steelworkers of America; Kiriakasis grievance*, undated. Teplitsky, MacKenzie, McGowan — 6 pages. (78)

Bumping rights — trial period not mandatory where unreasonable to expect that minimum requirements will be satisfied; grievance dismissed. *Re Spar Aerospace Limited and United Automobile Workers of America, Local 673; Garrod grievance*, October 13, 1981. Brent — 10 pages. (79)†

Bumping of probationary employee — grievor entitled to wage received by his classification and not that of probationary employee he was replacing; grievance allowed. *Re International Tools Division of International Tools (1973) Limited and Windsor Mouldmakers Union, Local 1680; Lobzun grievance*, October 2, 1981. Rubenstein — 12 pages. (80)

Duty of fairness — company did not act unfairly in matter of grievor's lay-off; grievance dismissed. *Re NCR Canada Limited and Graphic Arts International Union, Local 28-B; Burscough grievance*, October 9, 1981. Prichard — 13 pages. (81)

Qualifications — grievor not capable of meeting normal job requirements within seven-day instruction period; grievance dismissed. *Re Northern Telecom Canada Limited and United Automobile Workers, Local 1915; Ruddell grievance*, July 31, 1981. Weatherill — 8 pages. (82)

Senior teacher declared surplus — only teacher qualified to teach particular course; grievance allowed. *Re Northumberland and Newcastle Board of Education and Northumberland and Newcastle Branch Affiliate (District 49) of Ontario Secondary School Teachers' Federation; Ballantyne grievance*, October 7, 1981. Adams — 18 pages. (83)

Temporary lay-off — notice not applicable; grievance denied. *Re O and K Orenstein and Koppel Canada Limited and Local 1740, International Association of Machinists and Aerospace Workers; Green grievance*, September 18, 1981. Majority: Dunn, MacDermid; dissent: Carter — 4 pages. (84)

**Management Rights**

Establishment of incentive standard — right to establish standard; grievance dismissed. *Re Affiliated Medical Products Limited and Amalgamated Clothing and Textile Workers Union, Local 1775; policy grievance*. See (10), *supra*. (85)

Requirement to use time clock introduced — not disciplinary; grievance dismissed. *Re Nakan Products Limited and Oil, Chemical and Atomic Workers International Union, Local 9-819; policy grievance*, September 22, 1981. Majority: Brunner, Addario; dissent: More — 13 pages. (86)

**Overtime**

Work beyond end of shift because worker on next shift late — tardiness provision applying to Sunday work; grievances dismissed. *Re E.B. Eddy Forest Products Limited and Canadian Paperworkers' Union, Local 34; Baird and Brown grievances*, October 6, 1981. Majority: Roine, Laishley; addendum: Laishley; dissent: Quaife — 10 pages. (87)

**Probationary Employee**

Arbitrability of discharge — denial of access to grievance procedure in collective agreement not contrary to section 37(1); grievance not arbitrable. *Re Pinewood Court Home for the Aged and Canadian Union of Public Employees, Local 2179; Stewart grievance*, October 8, 1981. Aggarwal — 30 pages. (88)\*†

Arbitrability of discharge — no right to grieve discharge; objection allowed. *Re Windsor, Corporation of City of, and Canadian Union of Public Employees, Local 82; Langlois and Cloutier grievances*, October 6, 1981. Verity — 17 pages. (89)\*†

Arbitrability of discharge — substantive right to grieve against discharge; grievance arbitrable. *Re Ontario Hydro and Ontario Hydro Employees' Union, Local 1000, Canadian Union of Public Employees; Faeth grievance*, September 30, 1981. Majority: Kennedy, Charney; dissent: Noonan — 15 pages. (90)\*

Calculation of probationary period — overtime days to be counted as "working days"; grievor not a probationary employee. *Re Edwards, Owen Sound Operations (Unit of General Signal of Canada Ltd.) and United Steelworkers of America, Local 7466; Millar grievance*, September 28, 1981. Linden — 8 pages. (91)\*

Calculation of probationary period: not to include period prior to earlier termination — required number of days not worked; discharge not arbitrable. *Re Windsor, Corporation of City of, and Canadian Union of Public Employees, Local 82; Langlois and Cloutier grievances*. See (89), *supra*. (92)\*†

Termination of probationary teacher — no right to arbitration under collective agreement; grievance not arbitrable. *Re Hearst Board of Education and Ontario Secondary School Teachers' Federation and L'Association des Enseignants Franco-Ontariens; Sass grievance*, October 9, 1981. Palmer, Tenace, Belanger — 9 pages. (93)

**Promotion**

Competitive clause — defect in procedure; employer directed to reconsider applicants. *Re Sunnybrook Hospital and Ontario Nurses' Association; Chacko grievance*, October 9, 1981. Majority: R.J. Roberts, Robinson; dissent: Lanigan; addendum: Robinson — 23 pages. (94)\*

Competitive clause — employer's standards reasonable; grievance dismissed. *Re Ontario Hydro and Office and Professional Employees International Union; Cobham grievance*, October 5, 1981. Majority: Carter, Kort; dissent: Paliare — 17 pages. (95)\*

Entitlement to automatic progression — period classification held means time worked; grievance dismissed. *Re Fabricated Steel Products (Windsor) Limited and United Automobile Workers of America, Local 195; group grievance*, October 2, 1981. Palmer — 7 pages. (96)

Qualifications — grievor's qualifications not made known to company; grievance dismissed. *Re Aerofin Corporation (Canada) Limited and United Electrical, Radio and Machine Workers of America, Local 522; Delaney grievance*, October 1, 1981. Little — 11 pages. (97)

Qualifications — senior employee unable to meet relevant qualification of regular attendance; grievance dismissed. *Re Air Canada and Canadian Air Line Employees' Association; Freedman grievance*, October 5, 1981. Burkett — 16 pages (98)\*

Qualifications — work performance deficient; grievance dismissed. *Re Canadian Imperial Bank of Commerce and Union of Bank Employees (Ontario), Local 2104; McColgan grievance*, May 28, 1981. Majority: J.L. Roberts, Stone; dissent: Weisbach — 12 pages. (99)

Qualifications: leadership ability and initiative — grievor not comparatively equal; grievance dismissed. *Re Canadian Canners Limited, #17, and United Food and Commercial Workers International Union, Local 403; Mereweather grievance*, October 7, 1981. Rose — 9 pages. (100)†

#### Recall

Apprenticeship program delaying return from lay-off — grievor consenting; grievance dismissed. *Re Wheatley Manufacturing, Division of International Tools (1973) Limited, and United Automobile Workers, Local 195; Williams grievance*, October 7, 1981. Ianni — 6 pages. (101)

#### Res Judicata

Previous individual and policy grievances answering issue — doctrine of *res judicata* applying as bar; objection upheld. *Re La Framboise Industrial Maintenance and Welding and International Association of Machinists and Aerospace Workers, Lodge 412; Trudell grievance*. See (4), *supra*. (102)†

#### Retirement

Retirement gratuity — grievor leaving employ of Board after a few years of teaching and at age thirty-nine found to have retired under retirement gratuity provision; grievance allowed. *Re London and Middlesex County Roman Catholic Separate School Board and Ontario English Catholic Teachers' Association; Flynn grievance*, October 1, 1981. Majority: Weatherill, Brock; dissent: Enright — 11 pages. (103)

#### Scheduling of Work

Change of shifts while employees on vacation — obligation to give notice of change defined. *Re Standard Tube Canada Limited and United Automobile Workers of America, Local 636; policy grievance*, October 14, 1981. O'Connor — 4 pages. (104)

#### Seniority

Extent of seniority rights — not applicable to work assignments within job classification; grievance dismissed.

*Re Carling O'Keefe Breweries of Canada Limited and Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers, Local 325; group grievance*, October 23, 1981. Carter — 6 pages. (105)

#### Sick Pay

Absence for diagnostic examination — grievor capable of working; grievance dismissed. *Re General Bakeries Limited and Milk and Bread Drivers, Dairy Employees, Caterers and Allied Employees, Local 647; Oakes grievance*, September 11, 1981. Majority: Raynor, McGowan; dissent: Miller — 8 pages. (106)\*

Accumulation of sick leave credits while absent on sick leave — accumulation to continue, grievance allowed.

*Re Oshawa Public Library Board and Canadian Union of Public Employees, Local 960, Oshawa Public Library Employees Union; union grievance*, October 1, 1981. Brunner, Sanderson, Lewis — 8 pages. (107)

#### Temporary Employees

Termination — temporary, full-time employees having no right to grieve their termination; grievances dismissed.

*Re Hydro Electric Commission of Thunder Bay and Local 339 of International Brotherhood Electrical Workers (office staff); Hyde grievance; and Re Hydro Electric Commission of Thunder Bay and Local 339 of International Brotherhood of Electrical Workers (building staff); Hansen and Loeper grievances*, September 4, 1981. Majority: Duchesneau-McLachlan, Walsh; dissent: Pesheau — 23 pages. (108)

Termination upon expiry of fixed-term contracts; collective agreement not permitting establishment of class of temporary employees outside its scope — remedies for improper lay-off applicable; grievance allowed. *Re Ottawa-Carleton, Regional Municipality of, and Canadian Union of Public Employees, Local 503; Finlettar grievance*, September 24, 1981. Majority: Swan, Deline; dissent: Greenberg — 17 pages. (109)\*

#### Training Fund

Training programme: association-appointed trustees of fund causing deadlock by delaying appointment of director — no prospect of desired provincial plan in near future; appointment to be made without further delay. *Re General Contractors Association of Toronto Construction Association and Labourers' International Union of North America, Local 506; training fund grievance*, October 6, 1981. Beatty — 12 pages. (110)

#### Transfer

Job to which grievor transferred not posted — transfer not considered temporary; grievance denied. *Re ITT Aimco Division Mississauga Operations and United Steelworkers of America, Local 7574; Conforti grievance*, October 1, 1981. Kennedy — 12 pages. (111)

Surplus teacher transferred while junior teacher retained — procedure violated; grievance allowed. *Re Peterborough County Board of Education and Ontario Secondary School Teachers' Federation; Goulding grievance*, October 26, 1981. Brent, MacDonald, Bekerman — 15 pages. (112)

Union official refused transfer — provisions in collective agreement not applying to temporary transfers; grievance dismissed. *Re Dominion Stores Limited and United Steelworkers of America, Local 14045; Varley grievance*, October 28, 1981. Gorsky — 13 pages. (113)†

#### Union Officials

Time off to attend arbitration hearing refused: collective agreement silent on attendance at hearings — need to imply minimum level of committee representation to enable grievance process to function; one committee member to be granted time off without pay upon timely notice. *Re Perth County Board of Education and London and District Service Workers' Union, Local 220; union grievances*, October 15, 1981. Majority: R.J. Roberts, Joyce; dissent Switzman — 20 pages. (114)\*

#### Union Rights

Refusal to post notices advertising job vacancy within association: bulletin boards provided for association notices — management having absolute right to refuse approval of notices if *bona fide*; grievance dismissed. *Re Toronto Western Hospital and Ontario Nurses' Association; association grievance*, September 25, 1981. Majority: Teplitsky, MacDougall; dissent: Beaulieu — 6 pages. (115)

#### Vacations

"Continuous service" — long-term disability exception applying to worker's compensation disability period; grievance dismissed. *Re Dufferin Area Hospital and Service Employees Union, Local 204; MacDiarmid grievance*, October 4, 1981. Majority: Rayner, Mustard; dissent: Maddison — 11 pages. (116)\*

Entitlement for regular full-time service — part-time hours not applicable; grievance dismissed. *Re Canada Safeway Limited and Retail Clerks Union, Local 409; union grievance*, October 22, 1981. H.D. Brown, Bickford, Halonen — 12 pages. (117)

#### Vacation Pay

Calculation — "gross earnings" include vacation pay in qualifying year; grievance allowed. *Re Romeo Machine Shop Limited and United Automobile Workers of America, Local 195; Wirth grievance*, October 5, 1981. Palmer — 7 pages. (118)

Entitlement: grievor absent for part of the year on Workman's Compensation — pro-rating of vacation improper; grievance allowed. *Re Mount Sinai Hospital and Service Employees Union, Local 204; Russo grievance*, October 16, 1981. Majority: Palmer, Ortlieb; dissent: Boettcher — 9 pages. (119)

#### Wages

Failure to notify union of new classification — no special rate in collective agreement; grievance allowed: *Re Toronto Western Hospital and Ontario Nurses' Association; Borenstein grievance*, October 9, 1981. Majority: Dunn, Cantillo; dissent: MacDougall — 11 pages. (120)

Minimum wage increase for promotions — not applicable during training step period; grievance dismissed. *Re Ontario Hydro and Canadian Union of Public Employees, Ontario Hydro Employees' Union, Local 1000; Cartwright grievance*, October 5, 1981. Majority: Brent, Kenny; dissent: McCullough — 13 pages. (121)

Progression — experience as casual nurse not to be considered; grievance dismissed. *Re St. Mary's General Hospital and Ontario Nurses' Association; Hannenburg grievance*, September 17, 1981. Teplitsky, Robins, Cook — 4 pages. (122)

Salary rates in wage progression scheme — based on time spent within classification rather than all time worked for employer; grievance dismissed. *Re London and District Association for the Mentally Retarded and Ontario Public Service Employees Union; Zeich grievance*. See (64), *supra*. (123)

Temporary transfer to a higher job — grievor performed work in higher-rated job in excess of five hours per shift; grievance allowed. *Re Procast Foundries Inc. and International Molders and Allied Workers Union, Local 445; Heintzman grievance*, October 7, 1981. Burkett — 11 pages. (124)

#### The Hospital Labour Disputes Arbitration Act

The following interest arbitration awards under *The Hospital Labour Disputes Arbitration Act* were filed with the Office of Arbitration during the month of October, 1981.

*Bethany Lodge Nursing Home, Lambeth, and London and District Service Workers' Union, Local 220*, (interim award), V.E. Scott, Perkins, Switzman — 3 pages.

*Carefree Lodge and Ontario Nurses' Association*, Ladd, McIntyre; addendum: McIntyre; partial dissent: Rusak — 7 pages.

*Participating Hospitals (Central Issues) and Ontario Nurses' Association*, O'Shea; partial dissents: Winkler, Paliare; appendices — 529 pages.

*Renfrew, Corporation of the County of, (Bonnechere Manor) and Ontario Nurses' Association*, Fraser, Eames, Walsh; addendum: Walsh — 32 pages.

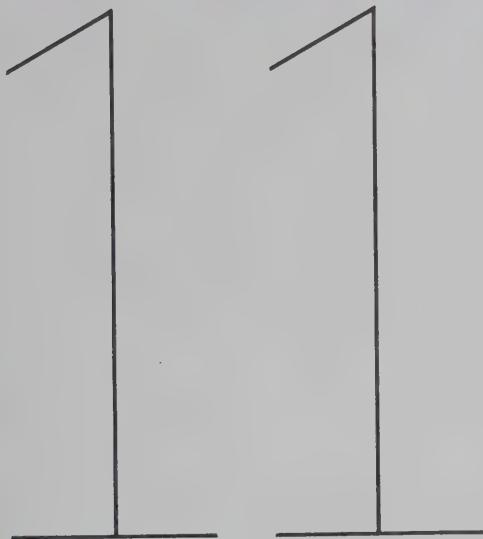
*St. Joseph of Villa Maria, Religious Hospitallers of, and Service Employees' International Union, Local 210*, Kennedy Burnell; dissent in part: Bounsal — 22 pages.

*Stormont, Dundas and Glengarry, United Counties of, (Glen-Stor-Dun Lodge) and Ontario Nurses' Association*, Ord, Walsh; dissent: Wilson; addendum to follow: Walsh — 17 pages.

*Sydenham District Hospital and Service Employees' Union, Local 210 (full-time and part-time)*, Saltman, Churchmurch, Lewis; addendum to follow: Lewis — 17 pages.

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# Monthly Bulletin



Ontario Ministry of Labour



Hon. Russell H. Ramsay, Minister  
T.E. Armstrong, QC, Deputy Minister

Office of Arbitration  
400 University Avenue, 6th Floor  
Toronto, Ontario  
M7A 1T7  
Tel. (416) 965-5669

Miss Jean M. Read, Director

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## Purchase of Awards

Due to increasing demand for the supply of awards, immediate service can no longer be guaranteed. For quantities in excess of twenty pages, lead time of forty-eight hours should be allowed. Also, copies of awards dated prior to 1976, which must be retrieved from storage, cannot be supplied in less than one week.

All awards listed in the *Monthly Bulletin* may be reviewed at the Office of Arbitration, 400 University Avenue, 6th Floor, Toronto, Ontario, M7A 1T7. Copies may be purchased for a fee of 50¢ per page and orders will be filled upon receipt of a request and a cheque or money order payable to the Treasurer of Ontario, for the applicable amount.

## Appointment of Arbitrators

Forms for requests for appointment of arbitrator under section 45 (formerly 37a) of *The Labour Relations Act* are available on request, from the Office of Arbitration.

## Approved Arbitrators

Professor Bernard Adell will be on sabbatical leave until the summer of 1983. His name has therefore been removed from the Minister of Labour's panel of arbitrators, but will be reinstated upon his return.

## Grievance Arbitration

The following awards were filed with the Office of Arbitration during the months of October and November, 1981.

The summary was prepared at the Faculty of Law, Queen's University, under the supervision of C.G. Simmons, B.A., B.C.L., LL.M.; D.D. Carter, B.A., B.C.L., LL.B. and K.P. Swan, P. Eng., LL.B.

\* Indicates award to be reported in full or in part in *Labour Arbitration Cases*.

† Indicates award issued under section 45 (formerly 37a) of *The Labour Relations Act*.

**Arbitrability**

Existence of agreement — employer estopped from denying collective agreement; bound by Ontario Labour Relations Board declaration of validity; grievance arbitrable.

*Re 365414 Ontario Limited (Coronet Theatre) and International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators, Local 173; union grievance*, November 18, 1981. Little — 21 pages. (1)†

Section 45; grievance procedure of collective agreement not exhausted — arbitrator not precluded from exercising jurisdiction under section 45. *Re Horton C.B.I., Limited (Fort Erie), and United Steelworkers of America, Local 3598; Carr grievance*, November 6, 1981. Brent — 14 pages. (2)\*†

Transfer to position outside bargaining unit — collective agreement not applying; grievance not arbitrable. *Re Ontario Hydro and Canadian Union of Operating Engineers and General Workers; Billimoria grievance*, November 9, 1981. Brent — 8 pages. (3)†

**Bargaining Unit**

Creation of new positions — employer required to discuss positions with union. *Re Thunder Bay, Corporation of City of, and Canadian Union of Public Employees, Local 87 (Inside Unit); union grievance*, November 17, 1981.

Eaton — 28 pages. (4)†

New truck scale installed — weighmen's tasks now performed by employees outside bargaining unit; grievance allowed. *Re Algoma Steel Corporation Limited and United Steelworkers of America, Local 2251; Ostroski grievance*, November 1, 1981. Brent, Morley, Gurevitch — 8 pages. (5)

Temporary full-time employees not included in the bargaining unit; grievance dismissed. *Re Etobicoke General Hospital and Ontario Public Service Employees; policy grievance*, October 26, 1981. Majority: H.D. Brown, Drmaj; dissent: Cochrane — 14 pages. (6)

**Call-in Pay**

Request to return to work after grievors returned home — entitled to four hours at overtime rate; grievances allowed. *Re IKO Industries Limited and United Steelworkers of America, Local 8580; Carriere, Dumont, Groleau, Roy grievances*, October 17, 1981. Majority: Curtis, Grills; dissent: Healy — 6 pages. (7)

**Classification**

Temporary assignment while incumbent on vacation — work of higher job performed; grievance allowed. *Re CN/CP Telecommunications and Canadian Association of Communications and Allied Workers; Ledoux grievance*, November 12, 1981. Majority: Brunner, Beaulieu; dissent: Milley — 12 pages. (8)

Temporary job — company not requiring grievor to perform duties of next job level; grievance dismissed. *Re A.E.S. Data Limited and Canadian Union of Operating Engineers; Guidotti grievance*, November 3, 1981. Egan — 8 pages. (9)†

Trainee performing work of higher classification — not entitled to higher rate; grievances dismissed. *Re Borough of York, Corporation of, and Canadian Union of Public Employees, Local 10; Crook, Hogan and Hunter grievances*, October 17, 1981. Bernstein — 9 pages (10)†

Work done by employees in higher classification — overlap permissible; grievance dismissed. *Re Livingston Industries Limited and International Woodworkers of America, Local 2-342; Clark grievance*, November 12, 1981. Majority: Brent, McIntosh; dissent: Marcantonio — 4 pages. (11)

**Collective Agreement**

Incorporation by reference — C.W.S. Manual incorporated by reference; job analysis in accordance with C.W.S. Manual also incorporated; grievance allowed. *Re Ivaco Rolling Mills and United Steelworkers of America, Local 7940; policy grievance*, October 20, 1981. Roach — 13 pages. (12)

**Contracting Out**

Construction and installation of new equipment — not repair or maintenance work; grievance dismissed. *Re Abitibi-Price Inc. and International Brotherhood of Electrical Workers, Local 1565; Peterson grievance*, October 15, 1981. Majority: O'Shea, Porter; dissent: Deveau — 20 pages. (13)

Failure to notify union of outside work — company in violation of collective agreement but no basis for assessment of damages. *Re Kellogg Salada Canada Inc. London Plant and American Federation of Grain Millers, Local 154; group grievance*, November 19, 1981. Majority: H.D. Brown, Morley; dissent: Libis — 16 pages. (14)\*

Full implementation of pre-existing arrangement to contract out — express prohibition in collective agreement overriding; grievance allowed. *Re Air Ontario (formerly Great Lakes Airlines Limited) and Canadian Air Line Employees' Association; policy grievance*, November 16, 1981. Brent — 26 pages. (15)

Policy grievance dismissed earlier — individual grievances alleging same cause dismissed since prior award not manifestly wrong; grievance dismissed. *Re Kennedy Lodge Nursing Home and Service Employees Union, Local 204; group grievance*, October 21, 1981. Majority: Palmer, Rosen; dissent: Simon — 10 pages. (16)

**Discharge**

Absence due to illness: refusal to attend required medical examination — employer not acting arbitrarily or unreasonably; grievance dismissed. *Re Sunnybrook Hospital and Sunnybrook Hospital Employees Union, Local 777; Davis grievance*, October 22, 1981. Majority: Linden, Kort; dissent: Beaulieu — 13 pages. (17)

Absence without leave — sufficient notice of absence because of illness; grievance allowed. *Re Plainfield Children's Home and Service Employees International Union, Local 183; Gregg grievance*, November 20, 1981. Hinnegan, Laing, Lewis — 10 pages. (18)

Absenteeism — company erroneously considering grievor to be permanently disabled; grievance allowed. *Re Rio Algom Limited and United Steelworkers of America, Local 5417; Major grievance*, November 18, 1981. O'Shea — 14 pages. (19)

Absenteeism — violation of reinstatement conditions after previous suspension — extenuating circumstances; reinstatement without compensation. *Re Seneca College of Applied Arts and Technology and Ontario Public Service Employees' Union; Main grievance*, November 23, 1981. H.D. Brown, McIntyre, Hallsworth — 24 pages. (20)

Absenteeism because of compensable injuries or illness — reinstatement with partial compensation reflecting attendance record. *Re E.B. Eddy Forest Products Limited and Lumber and Sawmill Workers' Union, Local 2693; Delarosbil grievance*, October 22, 1981. Majority: O'Shea, Bosnich; dissent: Bernardo — 28 pages. (21)

Absenteeism because of illness; employer not requesting confirmation — medical evidence available; leave of absence without pay ordered. *Re Square D Canada Electrical Equipment Inc. and United Steelworkers of America; Bramer grievance*, November 5, 1981. Black — 10 pages. (22)†

Absenteeism: medical examination refused — past absence and notification of future absence providing reasonable grounds for employer seeking confirmation; grievance dismissed. *Re John T. Hepburn Limited and United Steelworkers of America, Local 3335; Moscarelli grievance*, October 29, 1981. Black — 18 pages. (23)†

Absent without notification for three days; specific provision for penalty; grievance dismissed. *Re Budd Canada Inc. and United Automobile Workers of America, Local 1451; Lang grievance*, November 2, 1981. H.D. Brown — 20 pages. (24)

Alteration of grounds: sabotage of company records discovered after discharge for unsatisfactory work performance — company entitled to rely upon sabotage; grievance dismissed. *Re R.C.A. Inc. and Aerospace and Electronic Communications Employees' Association; Harris grievance*, October 19, 1981. Majority: O'Shea, Black; dissent: Weisbach — 21 pages. (25)\*

Assault on fellow employee without provocation — record of similar misconduct; grievance dismissed. *Re Gates Canada Inc. and United Rubber, Cork, Linoleum and Plastic Workers of America, Local 733; Chausic grievance*, October 15, 1981. O'Shea — 18 pages. (26)

Assault on a supervisor — incident occurring in an area where safe work practices essential; grievance denied. *Re Denison Mines Limited and United Steelworkers of America; Kirchner grievance*, October 28, 1981. Adams — 11 pages. (27)\*

Assault on supervisor alleged — employer failing to meet evidentiary burden to resolve conflicts in the evidence; grievance allowed. *Re Massey-Ferguson Industries Limited and United Automobile Workers of America, Local 458; Malik grievance*, October 26, 1981. Schiff — 4 pages. (28)

Criminal conviction: absence without leave — employer not obligated to participate in TAP programme; grievance dismissed. *Re Du Pont Canada Inc. (Ajax Works) and Teamsters Union 1166 Chemical, Energy and Allied Workers; Flintoff grievance*, November 16, 1981. Hinnegan, Binning, Blandizzi — 8 pages. (29)

Criminal conviction for drug trafficking — company met onus of proof in refusing to participate in TAP programme; grievance denied. *Re Domglas Inc. and United Glass and Ceramic Workers of North America; Thomas grievance*, November 6, 1981. Eaton — 15 pages. (30)†

Criminal conviction for possession of marijuana — not shown that lack of judgment in personal situation would affect professional life; no evidence that public trust and confidence forfeited; grievance allowed. *Re Oshawa General Hospital and Ontario Nurses' Association; Hamm grievance*, October 30, 1981. Betcherman — 12 pages. (31)\*†

Culminating incident; negligent work performance — poor work record; grievance dismissed. *Re G.B. Wonder Bakeries (division of General Bakeries Limited) and Retail, Wholesale, Bakery and Confectionery Workers Union, and Local 461; Kadri grievance*, November 25, 1981. H.D. Brown — 16 pages. (32)

Dishonesty: falsification of expense accounts alleged — intent to deceive not established; grievance allowed. *Re Bell Canada and Communications Workers of Canada; Anich grievance*, November 16, 1981. Majority: Burkett, Beaulieu; dissent: Filion — 19 pages. (33)

Dishonesty and theft alleged: redemption of sales receipts during store promotion — not established that employer policies violated; grievance allowed. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 414; Murray grievance*, November 27, 1981. H.D. Brown, Churchmuck, Spaxman — 7 pages. (34)

Failure to establish competence in higher-rated job resulting in termination — condition of employment that all first officers be potential captains; grievance dismissed. *Re Eastern Provincial Airways Limited and Canadian Air Line Pilots Association; Bell grievance*, October 15, 1981. O'Shea — 36 pages. (35)\*

Failure to follow correct cash register procedure — loss of trust in cashier; grievance dismissed. *Re Canada Safeway Limited and Retail Clerks Union, Local 409; Randus grievance*, October 23, 1981. O'Shea, Weiler, Halonen — 14 pages. (36)

Falsification of medical information in application form alleged; company directed to hire grievor for first available position which would not aggravate her back. *Re Daal Specialties (Canada) Limited and United Automobile Workers of America, Local 1474; McDonald grievance*, November 12, 1981. O'Shea — 11 pages. (37)

Falsification of time cards — inconsistent discipline; reinstatement without compensation. *Re Canadian Porcelain Company Limited and United Glass and Ceramic Workers of North America, Local 249; McCaffery et al. grievances*, November 2, 1981. P. Picher, Ferguson, Wakely — 12 pages. (38)

Fighting — provocation; reinstatement without compensation. *Re Mack Canada Inc. and International Association of Machinists and Aerospace Workers, Local 2281; Roach grievance*, November 14, 1981. Gorsky — 9 pages. (39)

Leaving work without following proper procedures — result of bona fide illness; grievance allowed. *Re Metropolitan Toronto, Municipality of, and Metro Toronto Civic Employees Union, Local 43; individual grievance*, November 12, 1981. Betcherman — 7 pages. (40)†

Part-time employee — excluded from protection against unjust discharge; grievor must seek remedy in another forum. *Re Humes Transport Ltd. and Teamsters Union, Local 938; Massicotte grievance*, November 16, 1981. Carter, Cornish, Murray — 22 pages. (41)\*

Refusal to comply with safety rules — employer mistakenly believing grievor was probationary employee; written warning substituted. *Re Horton C.B.I., Limited (Fort Erie), and United Steelworkers of America, Local 3598; Carr grievance*. See (2), *supra*. (42)\*†

Supplementary award — evaluation from Workmen's Compensation Board not forthcoming; termination justified. *Re Dahlstrom Canada Limited and United Steelworkers of America; De Caria grievance*, October 23, 1981. Kruger — 2 pages. (43)

Theft — elements of attempted theft established: failure to acknowledge misconduct; grievance denied. *Re Molson's Brewery (Ontario) Limited and Local 304, Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers; Cirone grievance*, November 17, 1981. Saltman — 21 pages. (44)

Verbal aggressiveness toward patient — probationary employee with poor work record; grievance denied. *Re Madonna Nursing Home and Canadian Union of Public Employees, Local 2199; Michell grievance*, November 2, 1981. Majority: Roine, Kelly; dissent: Littlewood — 17 pages. (45)

Verbal abuse of rest home resident — culminating incident; grievance dismissed. *Re Ottawa West End Villa Limited and Canadian Union of Public Employees, Local 1307; DeMercado grievance*, October 27, 1981. Majority: O'Connor, Brisbin; dissent: Dumbleton; addendum: Brisbin — 17 pages. (46)

#### Discipline

Abuse of washroom privileges — removal of reprimand from grievors' records recommended, providing employees comply with company rule. *Re Canada Packers Inc. and United Food and Commercial Workers International Union, Local 114-P; Iursich and Miller grievance*, November 5, 1981. Little — 38 pages. (47)

Altercation with member of the public — higher standard regarding contact with the public; grievance dismissed. *Re Metropolitan Toronto, Municipality of, and Canadian Union of Public Employees, Metropolitan Toronto Civic Employees Union, Local 43; Edward grievance*, November 19, 1981. Black — 8 pages. (48)†

Falsification of time cards resulting in one-day suspension; grievances dismissed. *Re Canadian Porcelain Company Limited and United Glass and Ceramic Workers of North America, Local 249; McCaffery et al grievances*. See (38), *supra*. (49)

Illegal strike — employer entitled to impose more discipline on union steward than rank-and-file employee for similar actions; grievance dismissed. *Re Toronto General Hospital and Canadian Union of Public Employers, Local 2001; Depradine and Brzycki grievances*, October 23, 1981. Egan — 13 pages. (50)\*†

Illegal strike — equal discipline administered; grievances dismissed. *Re Toronto General Hospital and Canadian Union of Public Employees, Local 2001; Depradine and Brzycki grievances*. See (50), *supra*. (51)\*†

Illegal strike: grievor delaying resignation as steward until after strike — employer justified in disciplining on basis of greater responsibility of union official for illegal strike; grievances dismissed. *Re Toronto General Hospital and Canadian Union of Public Employees, Local 2001; Gooden et al. grievances*, November 3, 1981. Egan — 10 pages. (52)†

Illegal strike: "positive acts" not mitigating against participation — disciplinary standards with respect to stewards applicable; grievance dismissed. *Re Toronto General Hospital and Canadian Union of Public Employees, Local 2001; Gooden et al. grievances*. See (52), *supra*. (53)†

Illegal strike: previous suspension due to abuse of former steward position not proper consideration for discipline — evidence limited to grievor picketing; suspension reduced. *Re Toronto General Hospital and Canadian Union of Public Employees, Local 2001; Gooden et al. grievances*. See (52, 53), *supra*. (54)†

Improper use of free transportation privileges — suspension of privileges for one year excessive; penalty reduced. *Re Air Canada and Canadian Air Line Flight Attendants Association; Brochu grievance*, November 23, 1981. Kennedy — 12 pages. (55)

Insubordination — insulting and abusive language directed to supervisor in the presence of other employees; grievance dismissed. *Re Frankel Steel Limited and Shopmen's Local Union 834 of International Association of Bridge, Structural and Ornamental Iron Workers; Calderari grievance*, October 28, 1981. O'Shea — 11 pages. (56)

Insubordination: refusal to follow orders and obscene response — supervisor's physical contact provocative; suspension reduced. *Re CAE-Montupet Diecast Ltd. and International Association of Machinists and Aerospace Workers, Local 268; Covello grievance*, October 29, 1981. Houston — 10 pages. (57)†

Insubordination: refusal to obey reasonable orders — escalation from verbal warnings to short suspension not improper progressive discipline; grievance dismissed. *Re Toronto Western Hospital and Ontario Nurses' Association; John grievance*, November 10, 1981. Betcherman, McGowan, Swenarchuk; addendum: Swenarchuk — 7 pages. (58)

Insubordination: refusal to wear luminous safety vest — grievor failing to show that compliance would create hazard to health or physical well-being; suspension reduced because foremen also not complying. *Re Toronto, Corporation of City of, and Metro Toronto Civic Employees Union, Local 43; Schaffer grievance*, November 3, 1981. Adamson — 16 pages. (59)†

Insubordination: refusal to work unplanned overtime to complete bus route — mitigating circumstances; grievance allowed. *Re Mississauga, Corporation of City of, and Amalgamated Transit Union, Local 1572; Pepper grievance*, November 2, 1981. Eaton — 26 pages. (60)†

Physical fitness: grievor sent home because of sore arm — safety risk not established; grievance allowed. *Re Multi Fittings Limited and International Molders & Allied Workers Union, Local 49; Springer grievance*, October 30, 1981. McLaren — 7 pages. (61)\*

Punching time card of another employee in breach of company rule; grievances dismissed. *Re Canadian General Electric Company Limited and International Union of Electrical, Radio and Machine Workers, Locals 534, 544, 567, 598, and 599; Coppens and Dienjes grievances*, November 24, 1981. Brunner, Byers, Hutchens — 12 pages. (62)

Sleeping on the job — result of overtiredness and lack of sleep rather than premeditation; suspension reduced. *Re America Can Canada Inc., and Can Workers Federal Union, Local 535; McCarthy grievance*, November 12, 1981. Rubenstein — 8 pages. (63)†

Sleeping on the job alleged: conflicting testimony — employer's onus not discharged due to poor credibility of principal witness; grievance dismissed. *Re Redpath Sugars Limited and International Union of Operating Engineers, Local 796; Lucero grievance*, November 17, 1981. Adamson — 6 pages. (64)†

Unauthorized absence from work — suspension reduced from eighteen days to one day. *Re Essex County Roman Catholic Separate School Board and Service Employees Union, Local 210; Bondy grievance*, October 27, 1981. Samuels, Kavanaugh, Quinlan — 6 pages. (65)

Violation of company rule requiring continuous attendance at work station — rule valid; discipline commensurate with degree of misconduct; grievance denied. *Re Globe and Mail and Southern Ontario Newspaper Guild; Milhaluk grievance*, November 16, 1981. Majority: Saltman, McCuaig; dissent: Tate — 9 pages. (66)

Work performance: alleged failure to follow proper inspection procedure — gaps in company's evidence; grievance allowed. *Re Bendix Heavy Vehicle Systems Inc. and United Automobile Workers, Local 27; Bhatti grievance*, November 10, 1981. Gorsky — 14 pages. (67)

#### **Employer Misconduct**

Abusive language by foreman to grievor alleged: straightforward reply to grievor's question in presence of others — possible lack of sensitivity but no harsh or obscene language; grievance dismissed. *Re Borough of York, Corporation of, and Canadian Union of Public Employees, Local 10; Ricciardi grievance*, October 15, 1981. Bernstein — 3 pages. (68)†

#### **Employment Status**

Long term, temporary employment broken by sick leave and Workmen's Compensation; prevented from returning to work when recalled by a work-related injury — temporary service not interrupted; grievance allowed. *Re Metropolitan Toronto, Municipality of, and Canadian Union of Public Employees, Local 43; Sainovski grievance*, November 23, 1981. Swinton, Tate, Moran — 9 pages. (69)

#### **Estoppel**

International union negotiated collective agreement — local agreed on collateral matter — international estopped from denying collateral agreement. *Re Canada Cement Lafarge Ltd. and United Cement, Lime and Gypsum Workers International Union, Local 219; Green grievance*, October 27, 1981. Majority: Palmer, Ronson; dissent: Nokes — 5 pages. (70)

Union not pursuing matter immediately; waiting for result of similar grievance elsewhere — retroactive relief not requested; objection denied. *Re Wheelabrator Corporation of Canada Limited and International Association of Bridge, Structural and Ornamental Iron Workers, Local 834; union grievance*, November 26, 1981. Hinngan — 9 pages. (71)

#### **Grievance Procedure**

Timeliness — time limits mandatory: no discretionary power under *Canada Labour Code*; grievance dismissed. *Re Bank of Montreal, Tecumseh and Lauzon Branch, Windsor and Union of Bank Employees, Local 2104; Breton grievance*, November 5, 1981. Majority: Kennedy, McGivney; dissent: West — 9 pages. (72)

Timeliness: delay due to mistake about grievor's status — employer not substantially prejudiced; extension granted. *Re Horton C.B.I., Limited (Fort Erie), and United Steelworkers of America, Local 3598; Carr grievance*. See (2, 42), *supra*. (73)\*†

Timeliness: grievor out of country when termination letter sent — no reason to assume those able to contact grievor were aware of time restrictions; extension granted. *Re John T. Hepburn Limited and United Steelworkers of America, Local 3335; Moscarelli grievance*. See (23), *supra*. (74)†

#### **Holiday Pay**

Lay-off: vacation and lay-off coinciding — vacation time is "time worked" not time on lay-off; grievor entitled to be paid for holiday occurring during lay-off. *Re Gen-Auto Shippers (Oshawa) Limited and Teamsters Union, Local 938; Bryan grievance*, November 3, 1981. Majority: Dunn, McRae; dissent: Farrell — 9 pages. (75)

#### **Interpretation**

Past practice: calculation of vacation pay — no evidence that union or members of bargaining unit aware of practice; past practice not controlling. *Re Wheelabrator Corporation of Canada Limited and International Association of Bridge, Structural and Ornamental Iron Workers, Local 834; union grievance*. See (71), *supra*. (76)

#### **Job Evaluation**

Increased level justified; grievance allowed. *Re Northern Telecom Canada Limited and Communication Workers of Canada; Dowhaluk grievance*, November 12, 1981. Delisle — 15 pages. (77)

#### **Job Vacancy**

Existence of vacancy — grievors' jobs declared vacant — contrary to special agreement; grievances allowed. *Re Lundy Steel-Division/Ivaco Inc. and United Steelworkers of America, Local 4140; Downey and Louks grievances*, November 13, 1981. Jolliffe — 18 pages. (78)†

**Lay-Off**

Bumping rights — grievors seeking to bump apprentices with less seniority; apprentices not part of the production workers and cannot be bumped by the grievors; grievance dismissed. *Re Falconbridge Nickel Mines Limited and Sudbury Mine, Mill and Smelter Workers Union, Local 598; Galipeault and Parissotto grievance*, November 11, 1981. Majority: H.D. Brown, Gordon; dissent: Robbins — 30 pages. (79)\*

Bumping rights: seniority for lay-offs to be calculated on continuous employment in bargaining unit; company directed to calculate required seniorities. *Re Dominion Stores Limited and United Steelworkers of America; Smith grievance*, November 16, 1981. C. Brown — 8 pages. (80)

Formal qualifications lacking — grievor having no bumping rights; grievance dismissed. *Re Highway Trailers of Canada Limited and International Molders' and Allied Workers' Union, Local 28; Jones grievance*, October 28, 1981. Little — 18 pages. (81)

Qualifications: trial period — trial period not of reasonably sufficient length; grievance allowed. *Re Eddy Match Company Limited and United Brotherhood of Carpenters and Joiners of America, Local 3175; Lance grievance*, October 27, 1981. McLaren — 9 pages. (82)

Refusal of employer's customers to allow grievor on their premises — no recourse under collective agreement; grievance denied. *Re J.I.C. Machine Tool (Electricians) Canada Ltd. and International Union of Electrical, Radio and Machine Workers, Local 560; Edwards grievance*, November 12, 1981. Barton — 10 pages. (83)†

Transfer from abolished job to new job assignment: considered to be lay-off situation — grievors qualified to take over equivalent jobs at other stores; grievances allowed. *Re Dominion Stores Limited and United Steelworkers of America; Cowan and Smith grievances*, October 23, 1981. Welling — 9 pages. (84)

**Leave of Absence**

Sabbatical leave — grievor took up offer of leave while not accepting university's terms; offer accepted by departing on leave; grievance dismissed. *Re Laurentian University, Board of Governors of, and Laurentian University Faculty Association; Arbuckle grievance*, October 27, 1981. Duchesneau-McLachlan — 6 pages. (85)

**Overtime**

Distribution — bulk of the overtime work not normally performed by grievor; grievance dismissed. *Re Mobil Chemical Canada Limited (Coatings Division) and United Steelworkers of America, Local 14049; Gray grievance*, November 9, 1981. H.D. Brown — 10 pages. (86)

Distribution — failure to call most senior employee; grievance allowed. *Re Dominion Stores Limited and Retail, Commercial and Industrial Union, Local 206; Leonard grievance*, November 11, 1981. Houston — 10 pages. (87)†

Distribution — grievor normally performing work involved and having less overtime; grievor entitled to the overtime; grievance allowed. *Re Chromasco Limited and United Steelworkers of America, Local 4632; Hawkins grievance*, November 13, 1981. Hinnegan — 7 pages. (88)

Distribution to certain classifications required — grievor in different classification; grievance dismissed. *Re Ladish Co. of Canada Ltd., Brantford, Ontario, and International Association of Machinists and Aerospace Workers, Lodge 1936; Lavallee grievance*, November 24, 1981. Verity — 6 pages. (89)†

**Pensions**

Contributions by employer for "compensated hours": obligation only for hours compensated by employer such as vacation time — no contributions required for time on Workmen's Compensation, Sickness and Accident, or lay-off; grievance allowed in part. *Re Canadian Engineering and Tool Company Limited and United Automobile Workers of America, Local 195; policy grievance*, November 26, 1981. Samuels — 7 pages. (90)

**Premium Pay**

Refusal to pay "dirty" premium for work on newly constructed hulls — not covered in collective agreement; grievance dismissed. *Re Port Arthur Shipbuilding Company and United Steelworkers of America, Local 5055; union grievance*, November 13, 1981. Bicknell — 14 pages. (91)

Responsibility allowance — no significant increased responsibility; grievance dismissed. *Re Tullamore Nursing Home (Division of Chelsey Park Corporation) and Ontario Nurses' Association; Miller grievance*, October 22, 1981. Majority: H.D. Brown, Bernardo; dissent: Symes — 15 pages. (92)

Temporary assignment to shift outside monthly tour — compliance with collective agreement; grievances dismissed. *Re Boise Cascade Canada Ltd., Fort Frances Division, and United Paperworkers International Union, Local 92; Petsnick and Vennechenko grievances*, November 4, 1981. Hinnegan — 9 pages. (93)

**Procedure**

Adjournment — key witnesses unable to attend; adjournment granted without costs. *Re Lewis Insulation Services Inc. and International Association of Heat and Frost Insulators and Asbestos Workers, Local 95*, November 13, 1981. Majority: Furness, Morley; partial dissent: Arnold — 8 pages. (94)

Request for adjournment denied — employer refusing to tender evidence in discharge case; reinstatement with compensation. *Re Ontario Humane Society and Canadian Union of Public Employees; Smith grievance*, November 17, 1981. Egan — 3 pages. (95)†

**Promotion**

Formal application not a precondition for eligibility — seniority applying only to formal applicants; grievance dismissed. *Re Bell Canada and Communications Workers of Canada; Petanowitch grievance*, September 28, 1981. Majority: Brunner, Healy; dissent: Robbins — 19 pages. (96)

Qualifications — employer considered job history and relevant personality factors; grievance dismissed. *Re Borough of Etobicoke, Corporation of, and Borough of Etobicoke Civic Employees' Union, Local 185; Tremblett grievance*, October 27, 1981. Schiff, Lawlor, Perron — 8 pages. (97)

Qualifications — grievor failing to adduce any evidence that incumbent was less qualified than grievor; grievance dismissed. *Re Bank of Montreal and Union of Bank Employees (Ontario), Local 2104; Reaume grievance*, November 12, 1981. Hinnegan, West, Kavanaugh — 6 pages. (98)

Qualifications — grievor lacking experience; grievances denied. *Re Borough of York, Corporation of, and Canadian Union of Public Employees, Local 10; Crook, Hogan and Hunter grievances*. See (10), *supra*. (99)†

Qualifications — grievor's qualifications not relatively equal to those of person who was awarded job; grievance dismissed. *Re Sunnyside Children's Centre and Ontario Public Service Employees Union; Coulter grievance*, November 4, 1981. Majority: Carter, Ellis; did not concur: Done — 7 pages. (100)

Qualifications — grievor not satisfying continuing education requirements; grievance dismissed. *Re Niagara, Regional Municipality of, and Canadian Union of Public Employees, Local 1287; Waldron grievance*, October 27, 1981. Adamson — 13 pages. (101)†

Qualifications — grievor only applicant; union only having to show minimal qualifications; grievance allowed. *Re Humpty Dumpty Foods Limited and Retail, Wholesale and Department Store Union, Local 46; Daley grievance*, October 20, 1981. Palmer — 8 pages. (102)

Qualifications — incumbent performing better on standard tests taken; grievance dismissed. *Re Adams Mine, Cliffs of Canada Limited and United Steelworkers of America, Local 6409; Desjardins grievance*, November 17, 1981. Kennedy — 8 pages. (103)

Qualifications: grievors not having qualifications — no obligation to grant interviews; grievances dismissed. *Re Canada Wire and Cable Limited and International Brotherhood of Electrical Workers, Local 2345; Anderson et al. grievances*, November 2, 1981. Verity — 9 pages. (104)†

Qualifications: interpersonal skills allegedly poor — employer's concern not clearly supported by evidence and no prior mention of problem; grievance allowed on condition of grievor attending course. *Re United Co-operatives of Ontario and Retail, Wholesale and Department Store Union, Local 414; Martin grievance*, October 29, 1981. Majority: Kennedy, Spaxman; dissent: Werry — 12 pages. (105)

Qualifications: lead hand position — initiative and ability to deal with others relevant factors; grievance dismissed. *Re SKF Canada Limited and International Association of Machinists and Aerospace Workers, Local 901; Dinsmore grievance*, November 17, 1981. Springate — 11 pages. (106)

#### Reporting Pay

Meeting with supervisor at completion of shift — not covered by reporting pay provision; grievance dismissed. *Re Hamilton Street Railway Company and Amalgamated Transit Union, Local 107; Jensen grievance*, November 16, 1981. Majority: Hinnegan, Billings; dissent: Bosnich — 5 pages. (107)

#### Responsibility Pay

Relief of head nurse: head nurses not scheduled to work weekends — designation of charge nurse for weekends having same relief effect as during week; grievance allowed. *Re Sudbury General Hospital of the Immaculate Heart of Mary and Ontario Nurses' Association; association grievance*, November 12, 1981. Majority: H.D. Brown, Symes; dissent: Murray — 18 pages. (108)

#### Scheduling of Work

Alteration of work schedule — management function of scheduling unrestricted; grievances dismissed. *Re Spar Aerospace Products Ltd. and United Automobile Workers of America, Local 112; Buckley and group grievances*, November 23, 1981. H.D. Brown — 11 pages. (109)

Shift change not offered to grievor — grievor possessing seniority; grievance allowed. *Re St. Mary's Cement, Bowmanville, and United Cement, Lime and Gypsum Workers International Union, Local 568; Wright grievance*, November 13, 1981. Black — 9 pages. (110)†

#### Transfer

Qualifications — successful applicant having better attendance record and being familiar with routine of job; grievance dismissed. *Re Wellesley Hospital and Service Employees Union; Abo-Doma grievance*, November 9, 1981. Majority: Kennedy, Goddard; dissent: Marshall — 15 pages. (111)\*

Qualifications: successful applicant having experience in position — employer entitled to consider relevant factors outside posted qualifications; grievance dismissed. *Re Ottawa General Hospital and Ontario Nurses' Association; Lalonde grievance*, November 26, 1981. P. Picher, Symes, Stansel — 30 pages. (112)\*

Scope of term — "transfers" not restricted to moves between classifications. *Re Ottawa General Hospital and Ontario Nurses' Association; Lalonde grievance*. See (112), *supra*. (113)\*

#### Union Officials

Provision for steward's choice of shifts — company breach; grievances allowed. *Re Spar Aerospace Products Ltd. and United Automobile Workers of America, Local 112; Buckley and group grievances*. See (109), *supra*. (114)

#### Union Security

Deduction of dues — "new employee" including employees new to bargaining unit; order for deduction of past dues. *Re Fanshawe College and Ontario Public Service Employees' Union; union grievance*, November 26, 1981. Brent, Hallsworth, Robbins — 8 pages. (115)

#### Vacations

Entitlement — qualifying "years of continuous service" referring to completed years; grievance dismissed. *Re University of Guelph and University of Guelph Staff Association; union grievance*. November 9, 1981. Majority: O'Shea, Sanderson; dissent: Bunce — 19 pages. (116)

Maintenance work required during vacation shutdown — management having right to require employees to perform such work; grievance dismissed. *Re Canwirco Inc., Belleville Division, and United Electrical, Radio and Machine Workers of America, Local 554; policy grievance*, October 20, 1981. Majority: P. Draper, Roberts; dissent: Russell — 11 pages. (117)

#### Vacation Pay

Calculation — "total weekly earnings" for qualifying year includes vacation pay; grievance allowed. *Re Wheelabrator Corporation of Canada Limited and International Association of Bridge, Structural and Ornamental Iron Workers, Local 834; union grievance*. See (71, 76), *supra*. (118)

Reduction for sick leave, long term disability and Workmen's Compensation benefits — inconsistent with past practice; grievance allowed. *Re Bissell Ltd. and United Steelworkers of America, Local 4886; Morgan et al grievance*, November 6, 1981. Baum — 8 pages. (119)†

Strike: calculation of credited service — back to work agreement applied; grievance allowed. *Re Bell Canada and Communications Workers of Canada; policy grievance*, November 17, 1981. Majority: P. Picher, Walsh; dissent: Healy — 20 pages. (120)

#### Wages

Ministry of Health refusing to fund contractual increases in call-back and stand-by pay — board not having power to direct ministry to participate in collective bargaining process, but employer obligated to pay increases. *Re Chatham and District Ambulance Service and Service Employees' union; union grievance*, November 6, 1981. Betcherman — 4 pages. (121)

Posting of temporary job — grievor successfully bid for job and only entitled to lower rate of posted job; grievance dismissed. *Re Mobil Chemical Canada Ltd. and United Steelworkers of America, Local 14049; Haggan grievance*, November 6, 1981. O'Shea — 14 pages. (122)

Rate protection from downgrading due to work shortage — continuing after lay-off; grievance allowed. *Re Northern Telecom Canada Limited and United Automobile Workers of America, Local 27; House grievance*, November 12, 1981. Burkett — 13 pages. (123)\*

Reduction in earned hour standard instituted by employer — change in equipment not material, grievance allowed. *Re Cooper Tool Group Limited and United Steelworkers of America, Local 6497; policy grievance*, November 3, 1981. Kennedy — 6 pages. (124)

"Related experience" — recognition of past experience as well as educational qualifications; grievance allowed. *Re Kingston, Frontenac and Lennox and Addington Health Unit and Ontario Nurses' Association; Ouellette grievance*, October 28, 1981. Majority: Delisle, McIntyre; dissent: Swan — 11 pages. (125)

Students: applicability of wage rate increases under memorandum of settlement — separate and self-contained schedule overriding; grievance dismissed. *Re Fort Erie, Corporation of Town of, and Canadian Union of Public Employees, Local 714; group grievance*, October 1, 1981. Houston — 12 pages. (126)†

Subpoenaed witness pay: entitlement only for court witnesses — attendance at arbitration hearings not compensable; grievance dismissed. *Re St. Mary's Cement Company and United Cement, Lime and Gypsum Workers International Union, Local 568; policy grievance*, November 19, 1981. Black — 11 pages. (127)†

#### Welfare Plans

Disability benefits: benefits based on percentage of salary — employer entitled to retain monthly pay ceiling on benefits grievance dismissed. *Re Air Canada and International Association of Machinists and Aerospace Workers; union grievance*, November 27, 1981. H.D. Brown — 12 pages. (128)

Employer liability — employer liable for benefits not paid by insurer; grievance allowed. *Re Canadian International Paper Company and Canadian Paperworkers Union; policy grievance*, November 18, 1981. McLaren — 17 pages. (129)

Employer's obligation — limited to providing insurance coverage — grievor must look to insurance company for payments; grievance dismissed. *Re Labatts Ontario Breweries Limited and National Brewery Workers Union, Local 1, Sawchuk grievance*, September 28, 1981. Palmer — 10 pages. (130)

#### Work Assignment

Change in job function and no employees displaced — employees excluded from bargaining unit not performing bargaining unit work; grievance dismissed. *Re Somerville Belkin Industries Limited and Canadian Paperworkers Union, Local 311; Kearley grievance*. See Vol. 11, #10 (1), *supra*. (131)

Drivers assigned cleaning duties on rotating basis — no breach of collective agreement; grievance dismissed. *Re Canada Building Materials Company and Teamsters Local 230; Union grievance*, November 4, 1981. McLaren, Filion, Beaulieu — 4 pages. (132)

Guidelines — relating to class size, unassigned time, lesson preparations and department time — employer making "best efforts" to adhere to guidelines; grievance denied. *Re Lambton County Board of Education and Ontario Secondary School Teachers' Federation; policy grievance*, October 19, 1981. H.D. Brown, Cazabon, Riddell — 14 pages. (133)

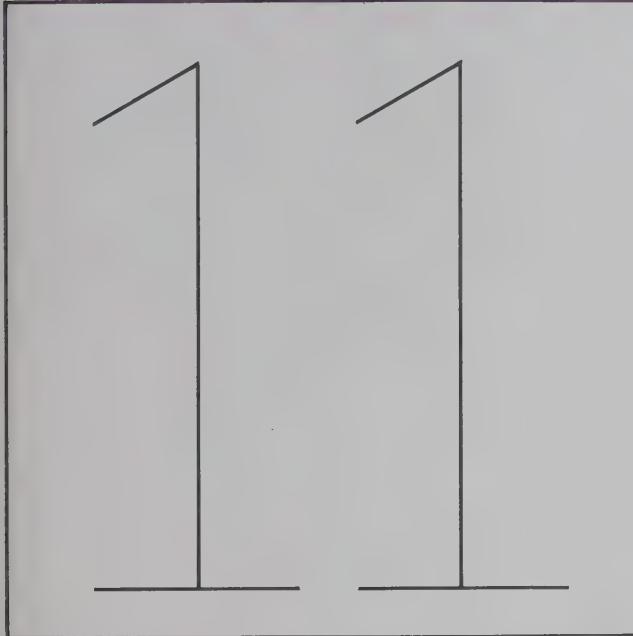
Temporary upgrading list: grievor disputing his ranking — collective agreement not violated nor rights affected until temporary promotion assignment actually made; grievance dismissed. *Re St. Lawrence Power Company and International Brotherhood of Electrical Workers, Local 2133; McAllister grievance*, October 19, 1981. Willes — 8 pages. (134)†

#### The Hospital Labour Disputes Arbitration Act

The following interest arbitration award under *The Hospital Labour Disputes Arbitration Act* was filed with the Office of Arbitration during the month of November, 1981.

*Extendicare Limited, Oshawa, and Canadian Union of Public Employees, Local 1586, Brent, Switzman; addendum* Switzman; partial dissent: Perkins — 76 pages.

# Monthly Bulletin



Ontario Ministry of Labour



Hon. Russell H. Ramsay, Minister  
T.E. Armstrong, QC, Deputy Minister

Office of Arbitration  
400 University Avenue, 6th Floor  
Toronto, Ontario  
M7A 1T7  
Tel. (416) 965-5669

Miss Jean M. Read, Director

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Office of Arbitration as a service to  
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## Purchase of Awards

Due to increasing demand for the supply of awards, immediate service can no longer be guaranteed. For quantities in excess of twenty pages, lead time of forty-eight hours should be allowed. Also, copies of awards dated prior to 1976, which must be retrieved from storage, cannot be supplied in less than one week.

All awards listed in the *Monthly Bulletin* may be reviewed at the Office of Arbitration, 400 University Avenue, 6th Floor, Toronto, Ontario, M7A 1T7. Copies may be purchased for a fee of 50¢ per page and orders will be filled upon receipt of a request and a cheque or money order payable to the Treasurer of Ontario, for the applicable amount.

## Appointment of Arbitrators

Forms for requests for appointment of arbitrator under section 45 (formerly 37a) of *The Labour Relations Act* are available on request, from the Office of Arbitration.

## Grievance Arbitration

The following awards were filed with the Office of Arbitration during the months of November and December, 1981. The summary was prepared under the supervision of C.G. Simmons, B.A., B.C.L., LL.M.; D.D. Carter, B.A., B.C.L., LL.B. and K.P. Swan, P. Eng., LL.B.

\* Indicates award to be reported in full or in part in *Labour Arbitration Cases*.

† Indicates award issued under section 45 (formerly 37a) of *The Labour Relations Act*.

## Arbitrability

Alleged agreement to expand scope of old grievance — no documentary evidence, no meeting of minds; grievance not arbitrable. *Re Ford Motor Company of Canada Limited and United Automobile Workers, Local 707; union grievance, April 24, 1981.* Palmer — 14 pages. (1)

Claim based partly on previous collective agreements — board's remedial authority not extending retroactively beyond period of current agreement. *Re London Tavern and International Beverage Dispensers' and Bartenders' Union, Local 280; Tatolis grievance, December 2, 1981. MacDowell, Bern, Weisbach — 32 pages. (2)\**

Multiple grievances — substance of grievances different though wording the same as previous grievances; grievance arbitrable. *Re Inco Metals Company and United Steelworkers of America; union grievance*, November 18, 1981. Majority: Palmer, Rouleau; dissent: Parry — 20 pages. (3)\*

Standing to grieve — grievor not a member of bargaining unit and having no status to grieve; grievance dismissed. *Re Wellesley Hospital and Ontario Nurses' Association; anonymous grievance*, November 4, 1981. Teplitsky, Beaulieu, Stewart — 10 pages. (4)

### Bargaining Unit

Managers: function of Manager Reactor Safety predominately managerial — position excluded from bargaining unit, according to criteria established in memorandum of agreement. *Re Atomic Energy of Canada Limited and Society of Professional Engineers and Associates; union grievance*, December 18, 1981. Carter — 15 pages. (5)\*

### Board of Arbitration

Jurisdiction to substitute lesser penalty — language of agreement limiting jurisdiction; grievance dismissed. *Re Ceilcote Canada, Division of General Signal Limited, and Sheet Metal Workers' International Association, Local 540; Smith grievance*, December 9, 1981. MacDowell, Wolfenden, Stringer — 23 pages. (6)

### Call-back Pay

Overlap with regular shift — company required to pay the four hour call back pay in addition to grievor's regular pay; grievance allowed. *Re Philco-Ford of Canada Limited and International Association of Machinists and Aerospace Workers, Local 2113; Saridis grievance*, December 18, 1981. Majority: Adams, Beaulieu; partial dissent: Sargeant — 7 pages. (7)

### Classification

Generic descriptions — grievor alleged her position was not properly classified into appropriate generic description; grievance dismissed. *Re Queen's University and Canadian Union of Public Employees, Local 1302; Perrin grievance*, December 15, 1981. Fraser — 11 pages. (8)†

Reclassification resulting in no salary increase — reclassification not unfair and not in violation of the collective agreement; grievance dismissed. *Re University of Windsor and Service Employees International Union, Local 210; Fields grievance*, December 21, 1981.

M. Picher — 10 pages. (9)

Same work as in higher classification being performed — grievances allowed. *Re Federal Pioneer Limited and International Union of Electrical Radio and Machine Workers, Local 654; Fletcher and Comancho grievances*, December 4, 1981. Kruger, Aslin, Byers — 6 pages. (10)

### Contracting Out

Installation work — outside contractor performing installation work which had been excluded from contracting out prohibitions; grievances dismissed. *Re J.M. Schneider Inc. and Schneider Employees' Association; Lang, Molson, Wilhelm grievances*, December 7, 1981. Majority: H.D. Brown, Filion; dissent: Koskie — 18 pages. (11)

### Damages

Delay in complying with reinstatement order — grievor entitled to full compensation as date of order for salary not covered by alternate employment — living allowance earned elsewhere deducted from award; interest not granted.

*Re Canadian Car Division, Hawker Siddeley Canada Limited, and Office and Professional Employees International Union, Local 81; Sovereign grievance*, December 16, 1981. Brunner — 11 pages. (12)

### Demotion

Accident record poor — grievor not at fault; grievance allowed. *Re Kenora, Corporation of Town of, and Canadian Union of Public Employees, Local 191; Fisher grievance*, December 7, 1981. Majority: Aggarwal, Lennon; dissent: Hebert — 16 pages. (13)

Disciplinary: excessive time away from work station — voluntary and correctible malfeasance for which only standard disciplinary measures appropriate; suspension substituted. *Re Dainty Foods Limited and Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers, Local 278; St. Louis grievance*, December 21, 1981. Hinnegan — 11 pages. (14)\*

### Discharge

Absence because of minor injury — grievor should have presented himself for light duty, company reaction excessive; one week's suspension substituted. *Re Goodyear Canada Inc. and United Rubber, Cork, Linoleum and Plastic Workers of America, Local 232; Booth grievance*, November 17, 1981. Palmer — 10 pages. (15)

Absent from work without permission for more than three working days — grievor not contacting hospital although able to do so; grievance denied. *Re Salvation Army Grace Hospital and Canadian Union of Public Employees, Local 929; Aucoin grievance*, November 26, 1981. Carter — 6 pages. (16)

Absenteeism — no evidence that absenteeism likely to continue; grievance allowed. *Re Gates Canada Inc. and United Rubber Workers, Local 733; Jennings grievance*, November 24, 1981. Weatherill — 9 pages. (17)

Absenteeism — previous severe discipline; company justified in applying penalty harsher than usual policy; grievance dismissed. *Re Consolidated-Bathurst Packaging Limited and International Woodworkers of America, Local 2-76; Leblanc grievance*, December 2, 1981. Majority: Springate, Rogers; dissent: Bekerman — 19 pages. (18)

Abuse of sick leave alleged: grievor taking training course from a company competitor while on sick benefits — evidence of sickness; suspension substituted. *Re DeHavilland Aircraft of Canada Limited, and United Automobile Workers, Local 112; Koblizek grievance*, December 8, 1981. H.D. Brown — 16 pages. (19)\*

Alcoholism: prior record justifying discharge — failure to establish that problem recognized and that real potential for rehabilitation exists; grievance dismissed. *Re CFTO-TV Limited and National Association of Broadcast Employees and Technicians; Burrows grievance*, December 17, 1981. Kennedy — 21 pages. (20)

Breach of several safety rules — only one breach proven, reinstatement without compensation. *Re Inco Metals Company and United Steelworkers of America, Local 6500; Picotte and Lamoureux grievances*, December 16, 1981.

Simmons, Gerrard, Wakely — 14 pages. (21)

Culminating incident alleged: altercation with fellow employee — failure to establish final incident of misconduct deserving discipline; grievance allowed. *Re International Parts (Canada) Limited and United Steelworkers of America, Local 6727; Camara grievance*, December 8, 1981. Majority: Hinnegan, Guest; dissent: Edson — 8 pages. (22)

Failure to renew appointment — evidence showing level of scholarship justifying renewal of appointment; appeal allowed. *Re Queen's University and Brian D'Argaville; non-renewal of contract grievance*, December 8, 1981. M. Picher — 76 pages. (23)

Insubordinate and abusive to foreman — grievor performing function as union steward when incident occurred; grievance allowed in part. *Re Butler Metal Products Company Limited and United Automobile Workers, Local 1780; Normore grievance*, November 23, 1981. O'Shea — 16 pages. (24)

Insubordination: failure to follow direct instruction — bad working relationship making reinstatement inappropriate; compensation but no reinstatement. *Re Lily Cups Limited and Printing Specialties and Paper Products Union, Local 466 of International Printing and Graphic Communications Union; Phillips grievance*, December 29, 1981. Majority: H.D. Brown, Bresner; dissent: Geiger — 24 pages. (25)\*

Insubordination: grievor uncontrollable and irrational as result of stress and alcohol — grievor to be reinstated conditionally; grievance allowed in part. *Re Duplate Canada Inc. and United Automobile Workers, Locals 222 and 1661; Lanthier grievance*, December 11, 1981. H.D. Brown — 11 pages. (26)

Insubordination: refusal to resume duties during dispute over vacation — penalty excessive in view of lengthy unblemished record; suspension substituted. *Re St. Clair College of Applied Arts and Technology, Board of Governors of, and Ontario Public Service Employees Union; Chapman grievance*, December 2, 1981. Brunner, Binder, Marszewski — 17 pages. (27)

Intoxication alleged: impairment to an extent interfering with duties not established — probationary grievor guilty of serious error of judgement; reinstatement without compensation ordered. *Re Ottawa-Carleton Regional Transit Commission and Amalgamated Transit Union, Local 279; Seguin grievance*, December 3, 1981. Hinnegan, Moran, Emond — 12 pages. (28)

Insubordination — grievors refused to sign warning slips when ordered to do so; signatures not required on warning slips; grievances allowed. *Re Great Lakes Rail Limited and United Steelworkers of America; Strods and Boyce grievances*, December 18, 1981. Aggarwal — 27 pages. (29)†

Leaving early and having fellow employee "clock him out" — deliberate breach of honour system involving another employee and disciplinary record justify penalty; grievance dismissed. *Re International Harvester Canada and United Steelworkers of America, Local 2868; Nicholls grievance*, November 30, 1981. Egan — 5 pages. (30)†

Poor workmanship resulting in damage to company property — insubordination to supervisors; grievance denied. *Re Welles Corporation Limited and United Automobile Workers, Local 195; Sutton grievance*, December 7, 1981. Kruger — 7 pages. (31)

Quit alleged — subjective and objective elements present: no coercive pressure; grievance dismissed. *Re Air Canada and Canadian Airline Employees' Association; Dutton grievance*, December 18, 1981. Burkett — 18 pages. (32)

Refusal to perform duty because of religious belief — not every nurse required to be able to complete blood transfusions for proper care of patients nor efficient operation of the hospital; unlawful discrimination found; grievance allowed. *Re Peterborough Civic Hospital and Ontario Nurses' Association; Wilson grievance*, December 18, 1981. Majority: Ellis, Switzman; dissent: Whittaker; addendum: Switzman — 46 pages. (33)\*

Theft — explanation for possession of product insufficient to meet conditions of earlier award; grievance dismissed. *Re Calvert of Canada Limited and United Automobile Workers, Local 2098; Renaud grievance*, October 23, 1981. Weatherill — 7 pages. (34)

Theft: consumer items worth \$800 from warehouse — discharge just and reasonable despite long service and no prior discipline; grievance dismissed. *Re Ontario Produce Company, Ontario Food Division of Oshawa Group Limited, and Teamsters Union, Local 419; Damiani grievance*, November 25, 1981. Burkett — 20 pages. (35)

Theft of a customer's property from company premises — grievance dismissed. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 414; Fortunato grievance*, October 22, 1981. Majority: Weatherill, Byers; dissent: Weatherdon — 10 pages. (36)\*

Unauthorized personal long-distance telephone calls: no dishonest intent or theft — long service, good record, character and seriousness of incident considered; suspension substituted and grievor ordered to pay for calls. *Re Pepsi-Cola Ltd. and Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers; Coleiro grievance*, December 21, 1981. Majority: H.D. Brown, Green; dissent: Gray — 19 pages. (37)

Unsafe care of patient: grievor refusing to accept demotion to dietary department — grievor to be reinstated to dietary department if she wishes; grievance allowed in part. *Re St. Mary's Hospital (London) and London and District Service Workers Union, Local 220; Kennedy-Aslin grievance*, November 10, 1981. Majority: O'Connor, Mustard; partial dissent: Robbins — 13 pages. (38)

Unsafe operation of equipment — grievor operating a fork lift in a manner reckless of the safety of others; suspension substituted. *Re Crawford Metal Corporation and United Steelworkers of America, Local 5958; Shea grievance*, December 17, 1981. Davis — 12 pages. (39)†

Work performance unsatisfactory — grievor failed, on notice, to meet standards of quality set reasonably by the hospital; grievance dismissed. *Re York-Finch General Hospital and Ontario Public Service Employees Union; Validzija grievance*, December 14, 1981. Majority: Arthurs, Reistetter; did not concur: Switzman — 16 pages. (40)

**Discipline**

Dishonesty alleged: double-counting of production — no basis for credibility preference; grievance allowed. *Re Certified Automotive Products (Central) Limited and United Steelworkers of America, Local 14831; Rossi grievance*, December 21, 1981. McLaren — 9 pages. (41)

Insubordination: assault on supervisor after questions about validity of leaving early — violation of employer's rules and *The Occupational Health and Safety Act* relating to incidents in underground mine; long service marred by poor record; grievance dismissed. *Re Pamour Porcupine Mines Limited and United Steelworkers of America, Local 4462; Harju grievance*, December 1, 1981. O'Shea — 21 pages. (42)

Insubordination; grievor refusing to take his break at a time other than the usual time — letter of reprimand substituted for three-day suspension. *Re Maple Lodge Farms Limited and United Food and Commercial Workers, Local 1105P; suspension grievance*, December 4, 1981. Betcherman — 5 pages. (43)†

Insubordination: minor altercation with supervisor resulting in step two notice — grievor unaware that individual was a supervisor; reduced to step one notice. *Re Inco Metals Company and United Steelworkers of America; Slessor and Hoekstra grievances*, November 24, 1981. Majority: O'Shea, Paré; dissent: Carrière — 13 pages. (44)\*

Insubordination — refusal in presence of customer to properly handle parts as requested by three superiors; suspension upheld. *Re Budd Canada Inc. and United Automobile Workers, Local 1451; Diver grievance*, December 15, 1981. O'Connor — 9 pages. (45)

Insubordination: refusal to discuss misunderstanding over vacation with superior — conduct defiant and unreasonable; suspension upheld. *Re St. Clair College of Applied Arts and Technology, Board of Governors of, and Ontario Public Service Employees Union; Chapman grievance*. See (27), *supra*. (46)

Insubordination: refusal to obey order — refusal wilful even though order indirect; grievance denied. *Re Chatham, Corporation of City of, and Chatham Firefighters Association, Local 486, International Association of Firefighters; McNairney grievance*, December 8, 1981. Kennedy — 10 pages. (47)

Insubordination: temper outburst in response to request for doctor's certificate — suspension justified in view of record; grievance dismissed. *Re National Grocers Company Limited and Retail, Wholesale and Department Store Union, Local 414; Marshall grievance*, December 9, 1981. Kennedy, Dahmer, Salmon — 6 pages. (48)

Leaving line without permission to go to washroom — grievor failing to make supervisor aware of urgency of her need; penalty reduced to written warning. *Re Wyeth Ltd./Ltee. and Energy Chemical Workers Union, Local 368; Clinansmith grievance*, November 25, 1981. Brent — 8 pages. (49)

Leaving work station alleged — grievor filling functions related to duties; grievance allowed. *Re Sarnia, Corporation of City of, (Marshall Gowland Manor) and London and District Service Workers' Union, Local 220; Arsenault grievance*, November 30, 1981. Majority: Saltman, Mayne; dissent: Furlong — 9 pages. (50)

Negligent damage to machine resulting in one-day suspension — failure to satisfy onus; grievance allowed. *Re Multi Fittings Limited and International Molders & Allied Workers Union, Local 49; Pettinato grievance*, December 22, 1981. Brent — 6 pages. (51)

Refusal to work compulsory overtime because of transportation problem — employee responsible for transportation; suspension reduced. *Re Humpty Dumpty Foods Limited and Retail, Wholesale Bakery & Confectionery Workers Union, Local 461; Sabharwal grievance*, December 23, 1981. Hinnegan, Chiro, Reekie — 9 pages. (52)\*

Sleeping on the job due to medication — absence of pre-meditation no defence in view of failure to advise supervisor; serious safety risk and average record; grievance dismissed. *Re Noranda Mines Limited and Canadian Union of Base Metal Workers; Dennison grievance*, November 13, 1981. Rayner — 12 pages. (53)

Theft of company property alleged — possession not shifting onus to grievor; grievance allowed. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 414; Matthews grievance*, November 6, 1981. Majority: McLaren, Dahmer; dissent: Sargeant — 9 pages. (54)\*

Unauthorized absence — grievor absent notwithstanding request for leave denied; denial of leave not unreasonable in the circumstances; suspension reduced to reprimand. *Re Sudbury, Regional Municipality of, (Pioneer Manor Home) and Canadian Union of Public Employees, Local 148; Elofson grievance*, December 15, 1981. Duchesneau-McLachlan — 6 pages. (55)†

Unsatisfactory job performance alleged — grievor not culpable and failure to investigate fully the cause of the damage; grievance allowed. *Re Bristol-Myers Products Canada and Teamsters Chemical, Energy and Allied Workers, Local 1302; Power grievance*, November 25, 1981. Majority: O'Shea, Blandizzi; dissent: Simpson — 15 pages. (56)

**Estoppel**

Representation relating to incentive rate — union relying to its detriment on last negotiations; company estopped from altering the rate during term of current agreement; grievance allowed. *Re Westclox Canada Limited and International Union of Electrical, Radio and Machine Workers; O'Brien, Hinze, Rea and Hewitt grievance*, December 17, 1981. Majority: Beatty, Aislin; dissent: Filion — 14 pages. (57)\*

**Grievance Procedure**

Joinder of grievances: facts inadequate for determination of individual claims — principles enunciated and grievances remitted to parties. *Re CN/CP Telecommunications and Canadian Association of Communications and Allied Workers; joint grievances*, December 18, 1981. Majority: R.J. Roberts, Milley; dissent: Beaulieu — 12 pages. (58)\*

Multiple grievances — company can neither unilaterally group cases for representation nor refuse to process grievance it considers identical to former test cases. *Re Inco Metals Company and United Steelworkers of America; union grievance*. See (3), *supra*. (59)\*

Notice of grievance: nature of complaint not disclosed in grievance — employer apprised of substance at early stage; objection denied. *Re Air Canada and Canadian Airline Employees Association; Gaudreault grievance*, December 1, 1981. Simmons — 11 pages. (60)

Undue delay doctrine — objecting party must show undue delay attributable to other party and consequent prejudice. *Re CN/CP Telecommunications and Canadian Association of Communications and Allied Workers; joint grievance*. See (58), *supra*. (61)\*

Undue delay: grievor aware of alleged breach of persistent and recurring nature three years before grieving — prejudice to employer and lack of reasonable excuse; grievor permitted to claim for unpaid wages only as of four weeks prior to filing of grievance. *Re London Tavern and International Beverage Dispensers' and Bartenders' Union, Local 280; Tatolis grievance*. See (2), *supra*. (62)\*

Timeliness: unreasonable delay — no extension requested; grievance not arbitrable. *Re Foster Wheeler Limited and United Steelworkers of America, Local 6519; Dufton grievance*, November 5, 1981. Weatherill — 12 pages. (63)

Timeliness: unreasonable delay — prejudice to company; grievance not arbitrable. *Re Ferranti-Packard Limited and United Steelworkers of America, Local 5788; O'Brien grievance*, November 20, 1981. Majority: Weatherill, Storie; dissent: Wadden — 9 pages. (64)

#### Health and Safety

Safety equipment — responsibility for replacement of safety equipment lying with employee; grievance denied. *Re Budd Canada Inc. and United Automobile Workers, Local 1451; Lovely grievance*, November 25, 1981. O'Shea — 16 pages. (65)

#### Holiday Pay

Qualifying shift: grievor not working previous day due to lay-off but working on holiday — entitled to regular pay plus premium holiday rate; grievance allowed. *Re Quaker Oats Company of Canada Limited and United Food and Commercial Workers, Local 1172-1; Cooper grievance*, December 4, 1981. Majority: O'Shea, Wrightman; dissent: Storie — 14 pages. (66)

Part-time nurses working holidays: entitlement limited to premium pay — no entitlement to additional day's pay for holiday; grievance dismissed. *Re St. Mary's General Hospital and Ontario Nurses' Association; group grievance*, November 20, 1981. Majority: Brunner, Cook; dissent: Robbins — 15 pages. (67)

Qualifying days: absence to attend court — failure to give proper notice or obtain leave; grievance dismissed. *Re North American Steel Equipment Company Limited and United Steelworkers of America, Local 6662; Oleksiuk grievance*, December 8, 1981. Houston — 7 pages. (68)†

#### Illness

Transfer to holding pool during illness — letter setting out company policy not a violation of letter of understanding; grievance dismissed. *Re De Havilland Aircraft of Canada Limited and United Automobile Workers, Local 112; union grievance*, December 8, 1981. H.D. Brown — 10 pages. (69)

#### Job Evaluation

Completeness of job description challenged — grievance arbitrable. *Re Sudbury, Regional Municipality of, and Canadian Union of Public Employees, Local 207; group grievance*, November 18, 1981. O'Shea — 16 pages. (70)

New job — work performed including that found in two different categories; rate of pay to be a blend of rates of pay for both jobs on a weighted basis. *Re Midland, Corporation of Town of, and Ontario Public Service Employees Union, Local 328; Desroches grievance*, December 11, 1981. Houston, Beaulieu, Dalrymple — 11 pages. (71)

#### Job Posting

No applicants from bargaining unit qualified — grievor as most senior applicant reasonably considered; grievance dismissed. *Re Northern Telecom Canada Limited and United Automobile Workers, Local 1530; Dunlay grievance*, November 24, 1981. Willes — 12 pages. (72)

Selection must be made from written applications presented during two-day period — company not free to choose outside these restrictions; grievance allowed. *Re Cargill Grain Company Limited and Brotherhood of Railway, Airline & Steamship Clerks, Freight Handlers, Express and Station Employees, Lodge No. 650; Ingberg grievance*, December 16, 1981. Majority: Brunner, Stencer; dissent to follow: Piercy — 18 pages. (73)

Single applicant — grievor meeting accepted qualifications required; grievance allowed. *Re Children's Aid Society of Brant and Canadian Union of Public Employees, Local 181; Hampel grievance*, December 3, 1981. Adamson — 25 pages. (74)†

#### Lay-off

Bumping: apprentices — exception for apprentices non-applicable; grievance dismissed. *Re Foster Wheeler Limited and United Steelworkers of America, Local 6519; Dufton grievance*. See (63), *supra*. (75)

Bumping rights — seniority factor operative only in certain circumstances; grievance allowed. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union; Kay grievance*, November 11, 1981. Teplitsky, Sargeant, Spaxman — 4 pages. (76)

Bumping rights — upward bumping permitted; grievance allowed. *Re John T. Hepburn Limited and International Molders and Allied Workers Union, Local 28; Calderon grievance*, December 14, 1981. Delisle — 10 pages. (77)

Extent of bumping rights — grievor entitled to bump down into non-operator position; grievance allowed. *Re Mattawa, Corporation of Town of, and Canadian Union of Public Employees, Local 1465; Gardiner grievance*, November 9, 1981. Majority: Lunney, Fortin; dissent: Tafel — 12 pages. (78)

Failure to give notice — principles governing compensation; grievance allowed in part. *Re Rexwood Products Limited and Lumber and Sawmill Workers Union, Local 2995 of United Brotherhood of Carpenters and Joiners of America; union grievance*, November 30, 1981. Majority: H.D. Brown, Wadge; dissent: Fyshe — 16 pages. (79)\*

Inability to perform regular duties for medical reasons — grievor not considered to be technically "laid off"; grievance denied. *Re Consumers Glass Company Limited and United Glass and Ceramic Workers of North America, Local 200; Fazzini grievance*, December 7, 1981. Beatty — 7 pages. (80)

Payment of OHIP premiums while on lay-off — wording of collective agreement makes it clear that payment of premiums must be continued for first three months of lay-off; grievance allowed. *Re Border Tool and Die Limited and United Automobile Workers, Local 195; group grievance*, December 28, 1981. Samuels — 7 pages. (81)

Qualifications — no obligation to train grievor; grievance dismissed. *Re Hunter Rose Company and Graphic Arts International Union, Local 28-B; Hebert grievance*, November 30, 1981. Majority: McLaren, Quinn; dissent: Rusk — 11 pages. (82)

Qualifications — requirement of ability to perform occasionally in next higher classification improper; grievances allowed. *Re Domtar Packaging and Canadian Paperworkers' Union, Local 1597; Beazley and Lavery grievances*, December 22, 1981. Weatherill, Weisbach, Byers — 8 pages. (83)\*

#### Overtime

Distribution — overtime not distributed among the proper classification; damages awarded. *Re Canada Cement Lafarge Limited and United Cement, Lime and Gypsum Workers' International Union; Johnson grievance*, October 30, 1981. Majority: Boscariol, Nokes; dissent: Dinsdale — 15 pages. (84)

Distribution: grievors meeting all conditions — foreman following established practice and denial of opportunity not intentional; employer's offer of substitute overtime made available. *Re Flextile Limited and United Steelworkers of America, Local 14245; Lundrigan and Lundrigan grievances*, December 3, 1981. Eaton — 13 pages. (85)†

Distribution: work performed by temporary helpers — grievors in another occupational skills group not regularly performing work; grievances dismissed. *Re Carling O'Keefe Breweries of Canada Limited and Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers, Local 325; Mullally et al grievances*, October 13, 1981. Weatherill — 8 pages. (86)

Remedy for improper distribution — grievor offered further overtime opportunity within duration period but refused — no further remedy in damages is necessary; grievance denied. *Re Mobil Chemical Canada Limited and United Steelworkers of America, Local 14049; Way grievance*, December 15, 1981. Hinnegan — 7 pages. (87)

#### Premium Pay

Sunday work — premium payable for non-overtime Sunday work; grievance allowed. *Re Le Droit Ltee. and Union Typographique d'Ottawa, Local 102; group grievance*, November 27, 1981. Weatherill — 5 pages. (English translation not available). (88)

#### Procedure

Costs: witness expenses — employer not warning union of intention to argue only preliminary matter; union entitled to reimbursement. *Re Air Canada and Canadian Airline Employees Association; Gaudreault grievance*. See (60), *supra*. (89)

#### Progression

Progression test — credit for "written part" to be based on achievement in courses related to level of promotion under consideration; grievance denied. *Re Allied Chemical Canada Limited, Amherstburg, and United Automobile Workers, Local 89; group grievance*, November 20, 1981. Samuels — 8 pages. (90)

#### Promotion

Non-competitive seniority clause — grievor's medical disability no longer a factor; grievance allowed. *Re Dainty Foods Limited and Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers, Local 278; Edwards grievance*, December 8, 1981. R.J. Roberts — 10 pages. (91)

Qualifications — both employees equally qualified — grievor possessing more seniority — grievor considered to be reasonably available; grievances allowed. *Re Falconbridge Nickel Mines Limited and Sudbury Mine, Mill and Smelter Workers' Union, Local 598; Larrett and Durling grievances*, December 14, 1981. Adams, Valin, McIntyre — 12 pages. (92)

Qualifications — company's test reasonable and appropriate; grievance dismissed. *Re Emco Limited and United Steelworkers of America, Local 2699; Thomson grievance*, December 4, 1981. Verity — 15 pages. (93)†

Qualifications — grievor having less experience; grievance dismissed. *Re Abitibi-Price Inc. and Canadian Paperworkers Union, Local 132; Lecuyer grievance*, November 24, 1981. Majority: O'Shea, Hughes; dissent: Mazur — 17 pages. (94)

Qualifications — grievor not establishing competency; grievance dismissed. *Re Kingston General Hospital and Canadian Union of Public Employees, Local 1974; Plaveczki grievance*, November 26, 1981. Delisle — 10 pages. (95)†

Qualifications — grievor not having trade qualifications; grievance dismissed. *Re Canada Cement Lafarge Limited and United Cement, Lime and Gypsum Workers International Union, Local 219; Green grievance*, October 27, 1981. Majority: Palmer, Ronson; dissent: Nokes — 7 pages. (96)

Qualifications — grievor not qualified nor the most suitable candidate; grievance dismissed. *Re Kingston General Hospital and Canadian Union of Public Employees, Local 1974; Griffith grievance*, November 24, 1981. Delisle — 11 pages. (97)†

Qualifications — grievor possessing qualifications relatively equal to successful candidate and more seniority; employer to assess attendance, past record and ability to perform job of grievor and report to the board. *Re Ottawa, Corporation of City of, and Ottawa/Carleton Public Employees Union, Local 503; Warkus grievance*, November 24, 1981. Roine, Vice, Moskovitch — 12 pages. (98)

Qualifications — junior employee chosen over senior employee with equal qualifications; matter remitted back to company. *Re Falconbridge Nickel Mines Limited and United Steelworkers of America, Local 6855; Kingsley grievance*, December 1, 1981. Hinnegan, Valin, Patterson — 16 pages. (99)

Qualifications — no evidence of arbitrariness or unfairness; grievance dismissed. *Re Crouse-Hinds Canada Limited and United Automobile Workers; McKenzie grievance*, December 7, 1981. Majority: Brunner, Filion; dissent: Cooper — 10 pages. (100)

Qualifications — poor attendance and relevant consideration; grievance dismissed. *Re Firestone Canada Inc. and United Rubber, Cork, Linoleum and Plastic Workers of America, Local 113; Mailloux grievance*, November 30, 1981. Rose — 11 pages. (101)†

Qualifications: senior employee having substantially less experience than grievor — seniority not governing; grievance allowed. *Re Kent, Corporation of the County of, and Ontario Public Service Employees Union, Local 132; Leeson grievance*, December 3, 1981. Howe, Perrin, Holland — 22 pages. (102)

#### Random Time

Deduction from vacation time for other purposes — illness overrides notice provision; grievance allowed. *Re Hyde Spring and Wire and United Automobile Workers, Local 397; Baldwin grievance*, November 24, 1981. Palmer — 8 pages. (103)

#### Ratification Vote

Voting on health care plan held before memorandum of agreement became effective; new vote must be held. *Re Advance Containers of Canada Limited and Teamsters, Local Union 141; union policy grievance*, December 23, 1981. R.J. Roberts — 3 pages. (104)†

#### Scheduling of Work

Evening work introduced to a job which had always been performed during the day — employer having right to transfer employees from one shift schedule to another; grievance dismissed. *Re Canada Starch Company Inc. and United Food Processors Union, Local 483; Patterson grievance*, December 15, 1981. Hinngan — 7 pages. (105)

Notice: grievor absent due to illness — no obligation to provide personal notice. *Re Canada Malting Company Limited and Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers, Local 304; Seivright grievance*, November 24, 1981. Arthurs — 8 pages. (106)

Improper notice of shift change — changes in shift schedule requiring earlier notice than changes in individual employees schedule; grievance allowed. *Re Diamond Shamrock Canada Limited and Energy and Chemical Workers Union, Local 780; group grievance*, December 23, 1981. Black — 7 pages. (107)†

Provision obligating company to make every effort to keep old schedule — change in schedule necessary; grievance dismissed. *Re Domtar Inc., Domtar Packaging, Kraft Paper and Board Division, Trenton, and Canadian Paperworkers Union, Local 1470; union grievance*, December 11, 1981. Little, Byers, Quaife — 11 pages. (108)

#### Seniority

Successor employer — service with prior employer to be included; grievance allowed. *Re Middlesex-London District Health Unit and Canadian Union of Public Employees, Local 101; policy grievance*, December 28, 1981. Majority: P. Picher, Lewis; dissent: Gordon — 58 pages. (109)

#### Severance Pay

Entitlement — no "changes in equipment" or "changes in manufacturing process"; grievance dismissed. *Re Boise Cascade Canada Limited, Fort Frances Division, and United Paperworkers International Union; Ossachuk grievance*, November 24, 1981. Lunney — 13 pages. (110)

#### Sick Leave

Accumulation of credits — employer claiming employee must work one day in month for which sick leave credits are accumulated — not required under collective agreement; grievance allowed. *Re Sarnia, Corporation of City of, and Sarnia Professional Firefighters' Association, Local 492, International Association of Firefighters; policy grievance*, November 30, 1981. Saltman — 7 pages. (111)

#### Transfer

Intra-base transfer — management discretion limited to filling staff requirements existing during summer flight schedule; grievors entitled to transfer. *Re Air Canada and Canadian Airline Employees Association; Christenson and Luebker grievances*, December 17, 1981. Simmons — 8 pages. (112)

#### Travel Allowance

Temporary assignment to different location: entitled to compensation for additional distance travelled to work — no compensation for meals. *Re Canadian National Railway Company Telecommunications Division, and Canadian Brotherhood of Railway Transport and General Workers; Toulouse grievance*, December 16, 1981. Jolliffe, Milley, Beaulieu — 25 pages. (113)

#### Union Officials

Pay for negotiating committee members: dispute over proper meeting place — union aware of employer's refusal to attend and pay members; grievance dismissed. *Re Quaker Oats Company of Canada Limited and United Food and Commercial Workers Region 18, Local 293-1; Fisher et al grievance*, December 21, 1981. Houston — 11 pages. (114)†

#### Vacations

Calculation of entitlement: employer permitted to establish uniform vacation year; grievance dismissed. *Re Victoria Hospital Corporation and Ontario Public Service Employees' Union, Local 106; Starek grievance*, December 21, 1981.

Majority: Brunner, von Veh; dissent: Robbins — 18 pages. (115)

Maternity leave: vacation entitlement reduced because of maternity leave — pro-rating not permitted; grievance allowed. *Re Soo and District of Algoma Credit Union Limited and Office and Professional Employees Union, Local 214; Jourdin et al grievance*, November 25, 1981. Eaton — 20 pages. (116)†

Scheduling: grievor wishing to take vacation during planned shutdown of plant for major maintenance purposes — management having legitimate and reasonable grounds for refusal; grievance denied. *Re Westcane Sugar Limited and Canadian Union of Operating Engineers and General Workers, Local 101; Foulds grievance*, November 25, 1981. Samuels — 6 pages. (117)†

#### Vacation Pay

Calculation to be made on basis of twelve-month period stipulated in contract — not calculated on rate of pay at time vacation is taken; grievance denied. *Re Domtar Packaging Corrugated Containers Division, Kitchener Plant, and Canadian Paperworkers' Union, Local 1196; Watson grievance*, December 16, 1981. H.D. Brown, Weisbach, Byers — 12 pages. (118)

Computation — calculation of gross earnings not to include benefits such as OHIP; grievance denied. *Re Canadian International Paper Company, Container Division, and Canadian Paperworkers Union, Local 949, Burlington; Gibson grievance*, December 7, 1981. O'Shea — 18 pages. (119)

Entitlement while on sick leave — collective agreement did not disentitle the grievor to vacation pay; grievance allowed. *Re Sheldon's Engineering Limited and United Steelworkers of America, Local 2931; Egerton grievance*, December 17, 1981. Samuels — 10 pages. (120)†

#### **Wages**

Christmas bonus: to be given to employees hired before September 1 — "hired" to be given the meaning of the first day worked; grievance denied. *Re Falconbridge Nickel Mines Limited and Sudbury Mine, Mill and Smelter Workers' Union, Local 598; Durling grievance*. See (92), *supra*. (121)

Delay in payment of retroactive wages — delay beyond the control of the hospital; grievance dismissed. *Re Windsor Western Hospital Centre and Service Employees Union, Local 210; union grievance*, December 9, 1981. Majority: Samuels, Bartlet; dissent: Brown — 10 pages. (122)

Incentive standards — only some changes affecting standards; grievance allowed in part. *Re Emco Limited and United Steelworkers of America, Local 2699; Alaszkiewicz grievance*, December 7, 1981. Black — 13 pages. (123)†

Provision for crediting full-time employees for part-time experience — not altering hiring date basis for rate distinction; grievance dismissed. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 414; Kerman grievance*, October 28, 1981. Majority: Weatherill, Sargeant; dissent: Spaxman — 8 pages. (124)

Retroactive pay to employees who left prior to rendering of award — claim made through union, as in industry practice; grievance allowed. *Re Canadian Clothiers, Division of Fairweather Inc., and Amalgamated Clothing and Textile Workers' Union; union grievance*, November 25, 1981. Teplitsky — 4 pages. (125)

#### **Work Assignment**

Assignment to flood outdoor skating rink requiring night duty — employer entitled to make changes in shift assignments regardless of seniority; grievances dismissed. *Re Borough of York, Corporation of, and Canadian Union of Public Employees, Local 10; Panetta, Ricciardi grievances*, October 14, 1981. Bernstein — 5 pages. (126)†

Non-bargaining unit employee given temporary assignment — no trained employee within bargaining unit; grievance dismissed. *Re Dominion Stores Limited and Retail, Commercial and Industrial Union, Local 206; Irvine and LaDouceur grievance*, November 9, 1981. Houston — 14 pages. (127)†

Refusal to accept work — refusal not *bona fide* — employer may hire new employees and lay off most junior employees. *Re Canadian Clothiers, Division of Fairweather Inc., and Amalgamated Clothing and Textile Workers' Union; company grievance*. See (125), *supra*. (128)

Temporary reassignment claimed: position filled by grievor during previous absences — lack of sufficient work and no evidence of discrimination; grievance dismissed. *Re Borough of York, Corporation of, and Canadian Union of Public Employees, Local 10; Quatralé grievance*, October 14, 1981. Bernstein — 4 pages. (129)†

#### **The Hospital Labour Disputes Arbitration Act**

The following interest arbitration awards under *The Hospital Labour Disputes Arbitration Act* were filed with the Office of Arbitration during the month of December, 1981.

*Barton Place Nursing Home and Canadian Union of Public Employees, Local 1565*, (interim award), Saltman, Filion, Robbins — 3 pages.

*Bobier Convalescent Home and London and District Service Workers Union, Local 220*. Majority: H.D. Brown, McGowan; partial dissent: Switzman — 11 pages.

*Cikent Corporation Limited (Cochrane Nursing Home Limited, Tri-Town Nursing Home Limited (Kapuskasing), Tri-Town Nursing Home Limited (Haileybury), Timmins Nursing Home Limited, Sudbury Nursing Homes Limited) and Canadian Union of Public Employees, Locals 1771, 904 and 1182*. Majority: Saltman, Pharand; dissent to follow: Brisbin — 11 pages.

*Little's Nursing Home (Tecumseh) Limited and Service Employees Union, Local 210*. Majority: Saltman, Lewis; dissent to follow: Docherty; addendum: Lewis — 16 pages.

*Ottawa West End Villa Limited and Canadian Union of Public Employees, Local 1307*, Saltman, Brisbin, Mayne; addendum: Mayne — 14 pages.

*Participating Hospitals (Red Lake, Margaret Cochenor Hospital, Hamilton Civic Hospital, Toronto Western Hospital, Ottawa Perley Hospital, — Local Issues), Weiler, Dinsdale, Tirrell* — 9 pages.

*Participating Hospitals (Central Issues) and Ontario Nurses' Association* (supplementary award). Majority: O'Shea, Paliare; dissent: Winkler — 9 pages.

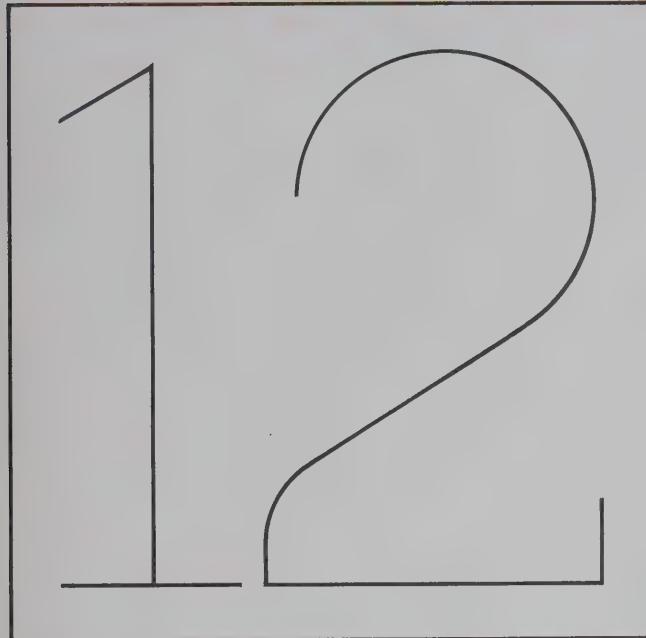
*Participating Hospitals (Local Issues) and Service Employees International Union*, V.E. Scott, Sargeant, Lewis; addendum: Lewis — 27 pages.

*Stormont, Dundas and Glengarry (Glen-Stor-Dun Lodge) and Canadian Union of Public Employees, Local 1792*. Majority: Ord, Walsh; dissent: Wilson; addendum: Walsh — 15 pages.

*Sudbury Memorial Hospital and Ontario Public Service Employees Union, Local 619*, (office, clerical and technical), Teplitsky, Buckland, McArthur — 2 pages.

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# Monthly Bulletin



Ontario Ministry of Labour



Hon. Russell H. Ramsay, Minister  
T.E. Armstrong, QC, Deputy Minister

Office of Arbitration  
400 University Avenue, 6th Floor  
Toronto, Ontario  
M7A 1T7  
Tel. (416) 965-5669

Miss Jean M. Read, Director

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Office of Arbitration as a service to  
persons involved in labour-management  
arbitrations.

## Purchase of Awards

Due to increasing demand for the supply of awards, immediate service can no longer be guaranteed. For quantities in excess of twenty pages, lead time of forty-eight hours should be allowed. Also, copies of awards dated prior to 1976, which must be retrieved from storage, cannot be supplied in less than one week.

All awards listed in the *Monthly Bulletin* may be reviewed at the Office of Arbitration, 400 University Avenue, 6th Floor, Toronto, Ontario, M7A 1T7. Copies may be purchased for a fee of 50¢ per page and orders will be filled upon receipt of a request and a cheque or money order payable to the Treasurer of Ontario, for the applicable amount.

## Appointment of Arbitrators

Forms for requests for appointment of arbitrator under section 45 of *The Labour Relations Act* are available on request, from the Office of Arbitration.

## Approved Arbitrators

The following people have been added to the Minister of Labour's approved panel of arbitrators:

Dean A.W.R. Carrothers, Faculty of Law, University of Ottawa, 57 Copernicus Street, Ottawa, Ontario, K1N 6N5; telephone (613) 231-3372.

Mr. David H. Kates, 171 Nepean Street, Suite 200, Ottawa, Ontario, K2P 0B4; telephone (613) 232-7151.

Professor Katherine E. Swinton, Faculty of Law, University of Toronto, Toronto, Ontario, M5S 1A1; telephone (416) 978-6418.

Professor Clarence H. Curtis has advised that he will not be available to act as an arbitrator for the next six months. Professor Curtis' name will therefore be removed from the list of arbitrators until early 1983.

Dean Stanley M. Beck is presently on sabbatical leave and unavailable to act as an arbitrator. Dean Beck's name will therefore be removed from the list of arbitrators until his return in July, 1983.

The Minister of Labour's list of approved arbitrators has been updated, and copies are available from the Office of Arbitration: telephone (416) 965-5669.

**Grievance Arbitration**

The following awards were filed with the Office of Arbitration during the months of December, 1981, and January, 1982. The summary was prepared under the supervision of C.G. Simmons, B.A., B.C.L., LL.M.; D.D. Carter, B.A., B.C.L., LL.B. and K.P. Swan, P. Eng., LL.B.

\* Indicates award to be reported in full or in part in *Labour Arbitration Cases*.

† Indicates award issued under section 45 of *The Labour Relations Act*.

**Arbitrability**

Collateral verbal agreement — matter not arbitrable. *Re Textile Rental Institute of Ontario (Work Wear Corporation of Canada Limited) and Laundry, Dry Cleaning and Dye House Workers International Union, Local 351; policy grievance*, January 11, 1982. Houston — 7 pages. (1)†

Discharge of probationary employee — just cause not applicable; grievance not arbitrable. *Re Consumers' Gas Company and Independent Gas Workers' Union, Local 513; Pereira grievance*, January 18, 1982. Majority: Kennedy, Healy; dissent: Lewis — 18 pages. (2)\*

Dispute between grievor and member of another bargaining unit; apology of a member of another bargaining unit for alleged use of abusive language sought — no authority for the board to deal with the matter. *Re Amoco Fabrics Limited and International Woodworkers of America, Local 2-600; Lalonde grievance*, January 8, 1982. Springate, Purdy, Smiley — 12 pages. (3)

Fairness of instructional assignment — not arising from interpretation, application, administration or alleged contravention of agreement. *Re Seneca College of Applied Arts and Technology, Board of Governors of, and Ontario Public Service Employees Union; White grievance*, January 19, 1982. Majority: Brunner, Hallsworth; dissent: Cochrane — 24 pages. (4)

Part-time collective agreement — hours of work too high for a part-time nurse; grievance dismissed. *Re Arnprior and District Memorial Hospital and Ontario Nurses' Association; McNab grievance*, December 31, 1981. Saltman, Swenarchuk, Winkler; addendum: Swenarchuk — 7 pages. (5)

Previous adjudication alleged — group claim for upgrading within classification different from prior individual claim for removal from classification; objection denied. *Re Otis Elevator Company Limited and United Steelworkers of America, Local 7062; group grievance*, January 20, 1982. O'Connor — 6 pages. (6)†.

Retirement policy — arbitrable to the extent that it relates to the exercise of management rights. *Re Ontario Council of Regents and Colleges of Applied Arts and Technology (Fanshawe College) and Ontario Public Service Employees Union; Hopkins grievance*, January 19, 1982. McLaren, Correll, Smith — 10 pages. (7)

Scope of grievance alleging unjust discharge — claim for (lay-off allowance) not included. *Re Union Carbide Canada Limited and Gas Products, Metropolitan Toronto, and United Steelworkers of America; MacDonald grievance*, December 31, 1981. H.D. Brown, Roberts, Barr — 9 pages. (8)\*

Settlement — union having ostensible authority to settle grievances; settlement binding; grievance not arbitrable. *Re Cambrian College and Ontario Public Service Employees Union; group grievance*, January 27, 1982. Majority: Brent, Hatch; dissent: McVey — 9 pages. (9)

University personnel committee set up as arbitration board — decision not reviewable by this board; grievance not arbitrable. *Re Laurentian University and Laurentian University Faculty Association; Zanibbi grievance*, December 7, 1981. Teplitsky, Boucher, Craven — 7 pages. (10)

**Bargaining Unit**

Reclassification to position outside bargaining unit — no material change in duties; grievance allowed. *Re Humber Memorial Hospital and Ontario Nurses' Association; Middleton grievance*, January 18, 1982. Majority: M. Picher, Robbins; dissent: Hamilton — 17 pages. (11)

**Classification**

New classification created — no jurisdiction to order parties to agree on rate for classification. *Re Halton Regional Board of Commissioners of Police and Halton Regional Police Association; union grievance*, January 19, 1982. Brent — 9 pages. (12)

**Contracting Out**

Casual employees preparing arena for show — not contracting out or technological change requiring union consent, but breach of obligation to offer overtime to bargaining unit; grievance allowed in part. *Re Belleville, Corporation of City of, and Canadian Union of Public Employees, Local 907; union grievance*, December 22, 1981. Willes — 13 pages. (13)†

**Damages**

Calculation — interest payable — not for board to determine liability to repay overpayment of unemployment insurance benefits. *Re Toronto Western Hospital and Canadian Union of Public Employees, Local 1744; Seed grievance*, January 25, 1982. Majority: Dunn, Walsh; dissent: McGowan — 11 pages. (14)

Full teaching load not available — confusion in evidence before previous board; relief not justified. *Re Northumberland and Newcastle Board of Education and Northumberland and Newcastle Branch Affiliate (District 49) of Ontario Secondary School Teachers' Federation; Ballantyne grievance*, January 20, 1982. Adams — 13 pages. (15)

Mitigation — reasonable steps taken to find alternate employment, every possible step not required; grievance allowed. *Re North American Steel Equipment Company Limited and United Steelworkers of America, Local 6662; Nicolussi grievance*, December 17, 1981. Palmer — 5 pages. (16)

**Demotion**

Incompetence alleged — evidence fails to establish grievor's inability to meet standards; grievance allowed. *Re Metropolitan Toronto, Municipality of, and Canadian Union of Public Employees, Local 79; Near grievance*, January 18, 1982. Majority: Burkett, Tait; dissent: Murray — 52 pages. (17)

**Discharge**

Absence resulting from compensable injury: not shown that grievor physically fit to resume former general duties — employer acting reasonably and no obligation to provide another job; grievance dismissed. *Re Hydro-Electric Commission of Hamilton and International Brotherhood of Electrical Workers, Local 138; Turcotte grievance*, January 12, 1982. Rose — 24 pages. (18)†

Absenteeism — not established that grievor incapable of regular attendance in future, conditional reinstatement. *Re City of Toronto, Corporation of, and Metropolitan Toronto Civic Employees' Union, Local 43; Bouliane grievance*, January 20, 1982. Lederman, Tate, Milks — 22 pages. (19)

Absenteeism — seniority and probability of better attendance taken into account; reinstatement without compensation. *Re Riverdale Hospital, Board of Governors of, and Canadian Union of Public Employees, Local 79; Adams grievance*, January 8, 1982. Majority: Swinton, Tate; dissent: Sergeant — 9 pages. (20)

Absent from work for more than three consecutive working days without notifying employer — *bona fide* reason for absence irrelevant; grievance denied. *Re United Carr, Division of TRW Canada Limited, and United Automobile Workers of America, Local 397; Pilon grievance*, November 30, 1981. Rayner — 11 pages. (21)\*

Absenteeism alcohol-related — recent absenteeism not serious — better prospects for rehabilitation now; grievance allowed. *Re A.E.L. Microtel Limited and International Union of Electrical Radio and Machine Workers, Local 526; Longstaff grievance*, January 5, 1982. Bernstein — 14 pages. (22)†

Absenteeism — past record of excessive absenteeism for medical reasons; medical problem not fully resolved; grievance dismissed. *Re Crouse-Hinds Canada Limited and United Automobile Workers of America; Mueller grievance*, December 31, 1981. Majority: H.D. Brown, Wakely; dissent: Cooper — 11 pages. (23)\*

Altercation including threats against life of foreman — grievor suffering from fatigue; reinstatement without compensation. *Re Indalex, Division of Indal Limited, and United Steelworkers of America, Local 2729; Culig grievance*, January 6, 1982. Betcherman — 7 pages. (24)

Assault upon fellow employee — grievance dismissed.

*Re Mount Sinai Hospital and Service Employees International Union, Local 204; Gonsalves grievance*, January 14, 1982. Boscariol — 7 pages. (25)†

Conflict of interest — discharge too harsh; reinstatement without compensation. *Re Air Canada and Canadian Air Line Flight Attendants Association; Jorge grievance*, January 22, 1982. Beatty — 10 pages. (26)

Culminating incident: injury due to minor safety violation and misuse of medical leave — poor disciplinary record; suspension substituted. *Re National Steel Car Corporation Limited and United Steelworkers of America, Local 7135; Briggs grievance*, November 27, 1981. Bernstein — 13 pages. (27)†

Driving vehicle while intoxicated — drinking was in breach of rules — not intoxicated; three-month suspension substituted. *Re Ottawa-Carleton Regional Transit Commission and Amalgamated Transit Union, Local 279; Neidy grievance*, December 15, 1981. Majority: D. Scott, Emond; dissent: Stewart — 11 pages. (28)

Failure to return to work after legal strike — no conscientious effort to return; grievances dismissed. *Re Algoma Steel Corporation Limited and United Steelworkers of America, Local 2251; Girardi and Behrens grievances*, January 7, 1982. Bernstein — 13 pages. (29)†

Fighting in the workplace — grievor to be treated equally to other employee involved in the fight; penalty of discharge reduced to suspension. *Re Mack Canada Inc. and International Association of Machinists and Aerospace Workers, Lodge #2281; Gilgour grievance*, January 5, 1982. Dunn — 6 pages. (30)

Fighting on company premises: scuffle minor in nature — poor disciplinary record; suspension substituted. *Re Lancia Bravo Foods Limited and United Food and Commercial Workers International Union; Batti grievance*, December 15, 1981. Bernstein — 9 pages. (31)†

Impairment on the job: progressive discipline and availability of assistance program — events after discharge showing potential for rehabilitation; suspension substituted. *Re Toronto Transit Commission and Amalgamated Transit Union, Local 113; Kehoe grievance*, January 12, 1982. Majority: Kennedy, Beaulieu; dissent: Filion — 15 pages. (32)

Insubordination — procedure of progressive discipline should have been followed; three-month suspension substituted. *Re Great Lakes Forest Products Limited and Canadian Paperworkers Union, Local 39; Whiting grievance*, January 4, 1982. Majority: Barton, Stencer; dissent: Holt — 15 pages. (33)

Insubordination: absence without leave — refusal of leave reasonable; grievance dismissed. *Re Canada Safeway Limited and Retail Clerks Union, Local 409; Smylie grievance*, January 21, 1982. Majority: Burkett, Bickford; dissent: Little — 27 pages. (34)\*

Insubordination and abusive language — poor disciplinary record; grievance dismissed. *Re G & G Packaging Limited and Teamsters Chemical, Energy and Allied Workers, Local 1351; Karlovski grievance*, January 4, 1982. H.D. Brown — 16 pages. (35)

Theft — grievor taking monies from parking receipts of the company; grievance dismissed. *Re City Parking (Division of Citicom Inc.) and Service Employees Union, Local 204; Nicolakis grievance*, January 8, 1982. Majority: Verity, Sergeant; dissent: Beaulieu — 23 pages. (36)

Threat to fellow employee: prior incidents resulting in transfers rather than discipline — combined incidents showing threat to co-workers; grievance dismissed. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 414; Croxall grievance*, January 6, 1982. Betcherman — 7 pages. (37)†

Work performance — company did not carry through on prior warnings of discipline; reinstatement without compensation substituted. *Re Workwear Corporation of Canada Limited and Laundry and Linen Drivers and Industrial Workers Union, Teamsters Local 847; Carter grievance*, January 13, 1982. Egan — 13 pages. (38)†

Work performance — employer did not establish just cause; grievance allowed. *Re Mohawk College of Applied Arts and Technology and Ontario Public Service Employees Union; Arora grievance*, January 22, 1982. H.D. Brown — 74 pages. (39)

Work performance unsatisfactory — employer's failure to use progressive discipline; compensation in lieu of reinstatement. *Re Extendicare Limited and Ontario Nurses' Association; MacNeil grievance*, December 23, 1981. Adams, Mathews, Symes — 16 pages. (40)\*

Work performance unsatisfactory — job performance more relevant than training centre performance; grievance dismissed. *Re Ontario Hydro and Ontario Hydro Employees' Union, Local 1000; Smith grievance*, January 20, 1982. Majority: Kennedy, Hayter; dissent: McCullough — 22 pages. (41)

Work performance unsatisfactory in new classification: no protection in agreement against discharge — *The Labour Relations Act* sections 44 and 45 allowing substitution of less severe penalty; demotion to previous classification and compensation ordered. *Re Ontario Banknote Limited and Toronto Typographical Union No. 91; Taylor grievance*, January 18, 1982. Sheppard — 14 pages. (42)†

### Discipline

Absence — failure to return to work on scheduled date — failure deemed to be unintentional; written warning to be substituted for suspension. *Re Metropolitan Toronto, Municipality of, and Canadian Union of Public Employees, Metropolitan Civic Employees Union, Local 43; Sheppard grievance*, January 21, 1982. Majority: Kennedy, Tate; dissent: Baker — 11 pages. (43)

Abuse of sick leave alleged — grievor under direct and continuous care of doctor while on sick leave; grievance allowed. *Re Cadbury Division, Whitby, and Milk and Bread Drivers, Dairy Employees, Caterers and Allied Employees, Local 647; Gattellaro grievance*, December 18, 1981. O'Shea — 16 pages. (44)†

Insubordination — union officials' attendance at emergency meeting necessary: "work now grieve later" rule not applicable; grievance allowed. *Re Gulf Canada Limited, Clarkson Refinery, and Energy and Chemical Workers Union, Local 593; Moore grievance*, January 12, 1982. Majority: Palmer, Edwards; dissent: Simpson — 14 pages. (45)\*

Insubordination: refusal to perform assigned work outside classification — duty to obey and grieve later; grievances dismissed. *Re Ferranti-Packard Transformers Limited and United Electrical, Radio and Machine Workers of America, Local 525; Weisman, Carnevale grievances*, January 7, 1982. O'Connor — 4 pages. (46)†

Insubordination: refusal to close window — safety concerns met and no reasonable risk of danger remaining; grievance dismissed. *Re Polygon Industries Limited and Canadian Union of Operating Engineers and General Workers, Local 101; Perrineau grievance*, January 6, 1982. O'Shea — 9 pages. (47)†

Insubordination: refusal to comply with direct order concerning safety evaluation — short employment and poor record; suspension upheld. *Re United Parcel Service Canada Limited and Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 141; Ellis grievance*, December 31, 1981. Majority: H.D. Brown, Brady; dissent: Shelkie — 21 pages. (48)

Insubordination: refusal to remove pin-ups resulting in suspension — effective insubordination; grievance dismissed. *Re Heintzman Limited (Sklar Division) and Upholsterers' International Union of North America, Local 50; Harvey grievance*, December 11, 1981. Rayner — 10 pages. (49)

Insubordination resulting in reprimand and one-day suspension — penalty not too harsh; grievance dismissed. *Re Fort Erie, Corporation of Town of, and Canadian Union of Public Employees, Local 714; McConnell grievance*, November 27, 1981. Majority: Welling, Yeo; dissent: Bosnich — 7 pages. (50)

Insubordination to foreman before bargaining unit employees — grievor possessing excellent work record; grievance allowed in part. *Re Steel Company of Canada Limited, Hilton Works, and United Steelworkers of America, Local 1005; Jonicijevic grievance*, January 19, 1982. Majority: Adams, Marshall; dissent: Baker — 10 pages. (51)

Lateness — new collective agreement provision cannot retroactively extend time period for considering previous occurrences; written warning substituted. *Re Keeprite Inc. and Keeprite Workers' Independent Union; Clarke grievance*, January 18, 1982. Majority: McLaren, Minsky; dissent: Rogers — 13 pages. (52)

Lateness and failure to call in resulting in being sent home for a day — company breached letter of understanding; written warning substituted. *Re G.B. Wonder Bakeries, London, (Division of General Bakeries Limited) and Retail, Wholesale, Bakery and Confectionery Workers' Union, Local 461; Kovach grievance*, January 4, 1982. H.D. Brown — 11 pages. (53)

Refusal to carry out employer's instructions — refusal established; grievance dismissed. *Re St. Mary's Hospital, London, and London and District Service Workers' Union, Local 220; Cadogan grievance*, January 25, 1982. Majority: R.J. Roberts, Mustard; dissent: Switzman — 12 pages. (54)

Theft alleged — not established on evidence; grievance allowed. *Re Mount Sinai Hospital and Service Employees Union, Local 204; Hamilton grievance*, December 18, 1981. O'Connor — 4 pages. (55)

Theft of silver alleged — substantial risk to security of company property established; suspension pending outcome of criminal proceedings reasonable; grievance denied. *Re Teck Corporation Limited (Silverfields Division) and United Steelworkers of America; Cloutier grievance*, January 8, 1982. Majority: O'Shea, Othmer; dissent: Farrell — 14 pages. (56)

Union activities — disciplinary transfer contrary to collective agreement; grievance allowed. *Re Board of Commissioners of Police for City of Sault Ste. Marie and Sault Ste. Marie Police Association; Doan grievance*, January 7, 1982. Kennedy — 26 pages. (57)\*

#### Enforcement

Employer failing to comply with earlier order — union directed to enforce in Supreme Court. *Re Heritage House Rest Home and Christian Labour Association of Canada; union grievance*, January 8, 1982. Adamson — 3 pages. (58)†

#### Estoppel

Delay of two years in objecting to new system of incentive data collection: substantial investment in project — union estopped from claiming relief. *Re Ferranti-Packard Transformers Limited and United Steelworkers of America, Local 5788; policy grievance*, January 21, 1982. Black — 19 pages. (59)†

#### Evidence

Hearsay: employer's testimony based on information from foreman — grievor's testimony accepted in absence of admissible evidence from employer. *Re International Parts (Canada) Limited and United Steelworkers of America; Williams grievance*, December 1, 1981. Rubenstein — 6 pages. (60)†

#### Grievance Procedure

Group grievance: union initially failing to provide employer with required details — information given prior to request for arbitration; objection denied. *Re Otis Elevator Company Limited and United Steelworkers of America, Local 7062; group grievance*. See (6), *supra*. (61)†

Timeliness: discipline "imposed" on date grievor advised of suspension rather than date suspension began — no prejudice but delay due to grievor's lack of diligence; objection upheld. *Re St. Mary's Hospital and London and District Service Workers' Union, Local 220; Woodburn grievance*, January 5, 1982. Majority: Brent, Farrar; dissent: Beaulieu — 12 pages. (62)\*

#### Holiday Pay

Part-time employees — company refusing to pay holiday pay to a part-time nurse for her anniversary day; grievance allowed. *Re Chelsey Park Nursing Home and Ontario Nurses' Association; McAuliffe grievance*, January 11, 1982. Ellis — 8 pages. (63)

#### Hours of Work

Statutory holiday — not considered to be hours of work for purpose of calculating overtime; grievance dismissed. *Re Algoma Steel Corporation Limited and United Steelworkers of America, Local 2251; group grievance*, December 7, 1981. Majority: Stewart, Morley; dissent: Gurevitch — 15 pages. (64)

#### Job Posting

Failure to advise grievor of his trial appointment and to review performance with him — new trial period ordered. *Re International Parts (Canada) Limited and United Steelworkers of America; Williams grievance*. See (60), *supra*. (65)†

#### Lay-off

Lack of work contested — remaining work not sufficiently substantial to justify recall; grievance dismissed. *Re Webster Manufacturing (London) Limited and International Molders' and Allied Workers' Union, Local 49; Shepherd grievance*, January 26, 1982. Samuels — 7 pages. (66)

Notice requirement before lay-off out of seniority order — breach of mandatory provision; grievance allowed. *Re Canadian Ferro Hot Metal Specialties Limited and Teamsters, Local 879; Hristopoulos grievance*, January 25, 1982. Houston — 7 pages. (67)†

Qualifications — senior employees not capable of performing work in classification held many years previously; imposition of company test reasonable; grievances dismissed. *Re Fruehauf Canada Inc. and United Automobile Workers of America, Local 252; Greeley and Norman grievances*, December 9, 1981. Palmer — 7 pages. (68)

Removal of work — partial closure of Kingston terminal not caused by movement of work to other terminals; grievance dismissed. *Re Brazeau Transport Inc. and Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 91; group grievance*, January 21, 1982. Majority: Adams, Pigott; dissent: Thomson — 10 pages. (69)

#### Management Rights

Personal appearance rule — rule prohibiting beard reasonable for safety; grievance denied. *Re Wardair Canada (1975) Limited and Canadian Air Line Flight Attendants Association; Prychun grievance*, January 4, 1982. Brunner — 24 pages. (70)

Personal appearance rule — unreasonably applied in situations where no useful purpose served; grievance allowed. *Re Weston Bakeries Limited, Kitchener, and Retail, Wholesale and Confectionery Workers Union, Local 461; union grievance*, January 15, 1982. Majority: Saltman, Spaxman; dissent: McGowan; addendum: Saltman — 12 pages. (71)

#### Overtime

Distribution — group leaders treated separately from other employees in the distribution of overtime; grievance dismissed. *Re Crown, Cork and Seal Company Limited and United Steelworkers of America, Local 8670; group grievance*, January 4, 1982. Majority: O'Shea, Cook; dissent: Barko — 10 pages. (72)

Distribution — work not normally performed by grievor's classification; grievance dismissed. *Re Rio Algom Limited and United Steelworkers of America, Local 5417; Laliberte grievance*, January 18, 1982. O'Shea — 9 pages. (73)

Remedy for improper distribution — "in kind" remedy not appropriate; grievor entitled to payment for lost opportunity. *Re Canteen of Canada Limited and Retail, Wholesale and Department Store Union, Local 414; Moreland grievance*, December 31, 1981. Majority: Hinnegan, Spaxman; dissent: Nielsen — 7 pages. (74)

#### Pension Plan

Retroactive general increase — applying to wages and not pension plan; grievance dismissed. *Re Hussman Store Equipment Limited and United Automobile Workers of America, Local 397; union grievance*, December 8, 1981. Palmer — 7 pages. (75)

#### Premium Pay

Call-in pay: telephone time at home not compensable where no action required — regular weekly on-call rate sufficient; grievances dismissed. *Re Ingersoll Public Utility Commission and Canadian Union of Public Employees, Local 4; Geroux, Campbell grievances*, January 7, 1982. Hinnegan — 9 pages. (76)†

Change of work schedule resulting in loss of day off, premium pay owing; grievance allowed. *Re St. Joseph's Health Centre and Canadian Union of Operating Engineers and General Workers, Local 101; Javed grievance*, January 20, 1982. Baum — 8 pages. (77)†

Lead hand — provision for premium above grade level — not meaning above highest grade level in bargaining unit; grievance dismissed. *Re Federal Pioneer Limited and International Union of Electrical, Radio and Machine Workers, Local 564; Kowal grievance*, December 30, 1981. Majority: Schiff, Byers; dissent: Aslin — 4 pages. (78)

Shift differential — part-time students coming within qualifying provision; grievance allowed. *Re Fairhaven Home for Senior Citizens and Canadian Union of Public Employees, Local 131; Webdale et al grievance*, January 8, 1982. Davis — 9 pages. (79)†

#### Procedure

Notice to third parties — grievor seeking to be awarded a flight assignment refused him by the company; notice ordered to all those who could be affected by outcome of grievance. *Re Air Canada and Canadian Air Line Pilots Association; Newell grievance*, January 22, 1982. H.D. Brown — 7 pages. (80)

#### Promotion

Denial of progression because of refusal to work voluntary overtime — work record a relevant factor in determining progression; grievance dismissed. *Re Canadian Timken Limited and United Steelworkers of America, Local 4906; Snelgrove grievance*, November 30, 1981. Palmer — 7 pages. (81)

Experience: grievor not possessing required experience — amount of experience required deemed to be reasonable; grievance denied. *Re Metropolitan Toronto Library Board and Canadian Union of Public Employees, Local 1582; Genge grievance*, January 22, 1982. Majority: P. Picher, Perron; dissent: Bird — 23 pages. (82)

Qualifications — company's evaluation procedure unfair and discriminatory; grievance allowed. *Re Crouse-Hinds Canada Limited and United Automobile Workers of America, McDougall grievance*, January 22, 1982. H.D. Brown — 13 pages. (83)

Qualifications — custodian experience not giving sufficient ability for maintenance position; grievance dismissed. *Re Lambton County Roman Catholic Separate School Board and Canadian Union of Public Employees, Local 1250; Turdon grievance*, December 23, 1981. Barton — 8 pages. (84)†

Qualifications — grievor more qualified; grievance allowed. *Re Waterloo, Regional Municipality of, and Canadian Union of Public Employees, Local 1655; Dietrich grievance*, January 13, 1982. Adamson — 10 pages. (85)†

Qualifications — grievor did not meet the experience requirement reasonably sought by the zoo; grievance dismissed. *Re Metropolitan Toronto Zoo and Canadian Union of Public Employees, Local 1600; Mariano grievance*, January 18, 1982. Davis — 10 pages. (86)†

Qualifications: ability to report on time and follow reasonable instructions implied requirements for unskilled positions — employer entitled to consider lateness and absenteeism records; grievances dismissed. *Re Carling O'Keefe Breweries of Canada Limited and Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers, Local 325; Wey, union grievances*, December 29, 1981. Adamson — 18 pages. (87)†

Qualifications: teaching master — grievor auto mechanic not relatively equal in heavy duty mechanics; grievance dismissed. *Re Sault College and Ontario Public Service Employees Union; Aceti grievance*, December 22, 1981. Majority: Brent, Shields; dissent: Marszewski — 8 pages. (88)

#### Recall

Qualifications — grievor not equal in experience, no implied requirement of trial period; grievance dismissed. *Re British Leaf Tobacco Company of Canada Limited and Canadian Union of Operating Engineers and General Workers; LaRouche grievance*, December 29, 1981. Kennedy — 15 pages. (89)

#### Retirement

Date of retirement determined by date of appointment; grievance dismissed. *Re University of Windsor, Board of Governors of, and Faculty Association of University of Windsor; Diemer grievance*, December 18, 1981. Palmer — 9 pages. (90)

#### Scheduling of Work

Priority in shift election — seniority only factor for priority in shift election; grievance allowed. *Re Canadian National Railway Company (Telecommunications Division) and Canadian Telecommunications Division of the Canadian Brotherhood of Railway Transport and General Workers; Fewes grievance*, January 5, 1982. Majority: P. Picher, Beaulieu; dissent: Milley — 30 pages. (91)

Provision of unpaid lunch hours — application of scheduling formula; grievance allowed in part. *Re White Farm Equipment Canada Limited and United Automobile Workers of America, Local 458; Donato grievance*, November 30, 1981. Palmer — 7 pages. (92)

Ten consecutive work days followed by four days off — violation of collective agreement; grievance allowed. *Re Stelco Inc. (Hilton Works) and United Steelworkers of America, Local 1005; policy grievance #1866*, December 18, 1981. Majority: Rayner, Valentine; dissent: Pogson — 10 pages. (93)

#### Successor Rights

Mortgagee taking over business: successor employer within meaning of section 63 of *The Labour Relations Act* — responsible for unpaid wages, benefits and union dues; grievances allowed. *Re Molly and Me Tavern and International Beverage Dispensers' and Bartenders' Union, Local 280; group, union grievances*, December 30, 1981. Betcherman — 9 pages. (94)†

#### Transfer

Lateral transfer of grievor — non-discriminatory transfer; grievance dismissed. *Re North York, Corporation of City of, and North York Civic Employees Union, Local 94; Martin grievance*, January 11, 1982. Jolliffe — 17 pages. (95)†

Rejection for medical reasons — not justified on evidence; grievances allowed. *Re Borough of Scarborough, Corporation of, and Scarborough Professional Fire Fighters Association, Local 626; Henshall and Rantin grievances*, January 15, 1982. Beatty — 14 pages. (96)

#### Union Rights

Impromptu meeting held on employer's premises without employer's consent — meeting prohibited by collective agreement but not interfering with management rights; grievance allowed in part. *Re Perth County Board of Education and London and District Service Workers' Union, Local 220; management grievance*, January 20, 1982. Majority: R.J. Roberts, Switzman; partial dissent: Joyce — 17 pages. (97)

#### Vacation Pay

Calculation — company calculated "gross earnings" by excluding vacation pay received in previous year, past practice not able to rebut clear language; grievance allowed. *Re Allen Industries Canada and United Automobile Workers of America; policy grievance*, November 30, 1981. Palmer — 8 pages. (98)

Entitlement: absence due to illness impliedly authorized by employer — entitled to full vacation pay; grievance dismissed. *Re Sheldons Engineering Limited and United Steelworkers of America, Local 2931; Kelley grievance*, January 14, 1982. Majority: O'Shea, Wilton; dissent: Smeenk — 11 pages. (99)

#### Wages

Allowance for extra degree: two Master's degrees — allowance payable for each degree; grievance allowed. *Re Bruce County Board of Education and Ontario Secondary School Teachers' Federation, District 44; Georgas grievance*, January 7, 1982. Majority: Brunner, Mangan; dissent: Wakely — 7 pages. (100)

Consumer price index allowance — terms of collective agreement provide for quarterly lump sum payments only, not folding into wage rates; grievance denied. *Re Essex County Board of Education and Canadian Union of Public Employees, Local 1243; policy grievance*, January 14, 1982. Majority: Saltman, Bartlet; dissent: Hogan — 13 pages. (101)

Experience recognition for placement on salary grid — arbitrary decision by employer; grievance allowed. *Re Board of Education for City of Toronto and Toronto Teachers' Federation; Douglas grievance*, January 20, 1982. Kennedy, Lewis, Morrison — 18 pages. (102)\*

Incentive system — new data collection methods not violating agreement unless established standards in system changed; grievance dismissed. *Re Ferranti-Packard Transformers Limited and United Steelworkers of America, Local 5788; policy grievance*. See (59), *supra*. (103)†

Refusal to cross picket line — no entitlement to wages; grievance dismissed. *Re Canadore College of Applied Arts and Technology and Ontario Public Service Employees Union; Bennett grievance*, January 5, 1982. Brent, Hubert, McIntyre — 4 pages. (104)

Responsibility allowance — grievor assigned temporarily as head nurse and performed at least half of duties; grievance allowed. *Re Humber Memorial Hospital Association and Ontario Nurses' Association; Green grievance*, December 31, 1981. Majority: H.D. Brown, Beaulieu; dissent: Plauntz — 18 pages. (105)\*

#### Welfare Plans

Long term disability: calculation of benefit rate — based on rate of pay in current collective agreement and not rate of pay at date of disability; grievance allowed. *Re University of Windsor and Service Employees International Union, Local 210; Stewart grievance*, January 18, 1982. M. Picher — 11 pages. (106)

Long term disability plan improved — employer not obligated to pay increases to persons already on plan; grievance dismissed. *Re Benson and Hedges (Canada) Limited and Bakery, Confectionery and Tobacco Workers International Union, Local 325T; union grievance*, January 20, 1982. M. Picher — 11 pages. (107)

Recall of grievor occurring part way through the month — "one day worked" qualifying provision applicable; grievance allowed. *Re McCallum Transport and Teamsters Local 938; Dobbie grievance*, December 23, 1981. Majority: P. Picher, McRae; dissent: Fosbery — 20 pages. (108)

Supplemental Unemployment Benefit Plan: grievor claimed reimbursement from plan for U.I.C. pay-back — plan guarantees a certain amount per week set off against U.I.C. benefits; grievance allowed. *Re Ford Motor Company of Canada Limited and United Automobile Workers of America, Locals 200, 584, 707, 1054 and 1520; Martin grievance*, November 30, 1981. Palmer — 11 pages. (109)

#### Work Assignment

Availability; work allocated to junior employee — available for work when grievor not available — company having right to give work to available driver; grievance denied. *Re Inter-City Truck Lines and Teamsters Union, Local 880; Hawkins grievance*, December 14, 1981. Majority: Brent, Singleton; dissent to follow: Shelkie — 6 pages. (110)

Use of part-time employees eliminating full-time positions — company entitled to schedule work to meet its needs; grievance dismissed. *Re Dominion Stores Limited and Retail, Commercial and Industrial Union, Local 206; Zula grievance*, November 16, 1981. Majority: Palmer, White; dissent: Peters — 6 pages. (111)

Vacancies due to election law — not filled according to relief procedures for vacancies occurring in twelve-hour shift; grievance allowed. *Re Allied Chemical Canada Limited, Amherstburg, and United Automobile Workers, Local 89; group grievance*, December 2, 1981. Samuels — 7 pages. (112)

#### The Hospital Labour Disputes Arbitration Act

The following interest arbitration awards under *The Hospital Labour Disputes Arbitration Act* were filed with the Office of Arbitration during the month of January, 1982.

*Green Acres Nursing Home, owned and operated by Belleville Nursing Homes, Inc., (full-time and part-time) and Retail, Commercial and Industrial Union, Local 206, Health, Office and Professional Employees Division. Baum, Mustard, Robbins; addenda: Mustard, Robbins — 21 pages.*

*Participating Hospitals and London and District Service Workers Union, Local 220, — Central and Local Issues (full-time). Majority: Barton, McDermott; dissent to follow: Switzman — 96 pages.*

*Sensenbrenner Hospital and Office and Professional Employees International Union, Local 166, (office, clerical and technical — full-time). Majority: Samuels, Wace; partial dissent: McVey; addendum: Wace — 74 pages.*

*Sensenbrenner Hospital and Office and Professional Employees International Union, Local 166, (office, clerical and technical — part-time). Samuels, Wace, McVey — 23 pages.*

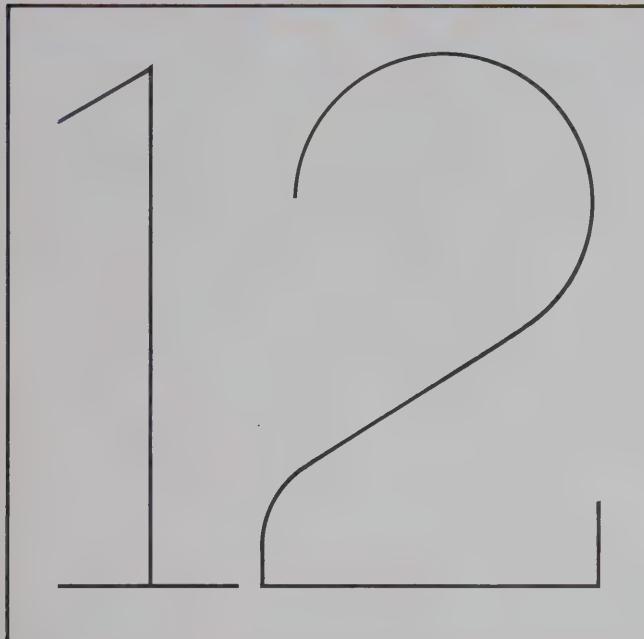
*Stormont, Dundas and Glengarry, United Counties of, (Glen-Stor-Dun Lodge) and Canadian Union of Public Employees, Local 1792, (supplementary award). Ord, Wilson, Walsh — 4 pages.*

#### Filing Awards

The attention of chairmen of boards of arbitration and sole arbitrators is drawn to the regulations under *The Labour Relations Act* which require every arbitrator to file a copy of his award with the Office of Arbitration within ten days of issuing such award.

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# Monthly Bulletin



Ontario Ministry of Labour



Hon. Russell H. Ramsay, Minister  
T.E. Armstrong, QC, Deputy Minister

Office of Arbitration  
400 University Avenue, 6th Floor  
Toronto, Ontario  
M7A 1T7  
Tel. (416) 965-5669

Miss Jean M. Read, Director

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Office of Arbitration as a service to  
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## Purchase of Awards

Due to increasing demand for the supply of awards, immediate service can no longer be guaranteed. For quantities in excess of twenty pages, lead time of forty-eight hours should be allowed. Also, copies of awards dated prior to 1976, which must be retrieved from storage, cannot be supplied in less than one week.

All awards listed in the *Monthly Bulletin* may be reviewed at the Office of Arbitration, 400 University Avenue, 6th Floor, Toronto, Ontario, M7A 1T7. Copies may be purchased for a fee of 50¢ per page and orders will be filled upon receipt of a request and a cheque or money order payable to the Treasurer of Ontario, for the applicable amount.

## Appointment of Arbitrators

Forms for requests for appointment of arbitrator under section 45 of *The Labour Relations Act* are available on request, from the Office of Arbitration.

## Grievance Arbitration

The following awards were filed with the Office of Arbitration during the month of February, 1982. The summary was prepared under the supervision of C.G. Simmons, B.A., B.C.L., LL.M.; D.D. Carter, B.A., B.C.L., LL.B. and K.P. Swan, P. Eng., LL.B.

\* Indicates award to be reported in full or in part in *Labour Arbitration Cases*.

† Indicates award issued under section 45 of *The Labour Relations Act*.

## Arbitrability

Assault by foreman alleged — jurisdiction lacking to award damages to an employee allegedly assaulted by foreman; declaratory award refused; grievance dismissed. *Re Algoma Steel Corporation Limited and United Steelworkers of America, Local 2251; Birch grievance*, February 19, 1982. Black — 8 pages. (1)†

Discharge of probationary employee — matter arbitrable. *Re Air Canada and Canadian Air Line Flight Attendants Association; Edgar grievance*, February 4, 1982. Hinnegan — 7 pages. (2)

Jurisdictional dispute over work assignment to individual — grievance arbitrable as policy grievance. *Re Bell Canada and Communications Workers of Canada; Belanger grievance*, February 8, 1982. Burkett, Healy, Robbins — 12 pages. (3)\*

Previous grievance abandoned — identical in substance to present grievance despite different remedy requested; grievance not arbitrable. *Re Kimberly-Clark of Canada Limited and United Paperworkers International Union, Local 665; Hermes grievance*, February 24, 1982. Majority: Hinnegan, Wakely; dissent: Hay — 12 pages. (4)

Similar grievances — union electing to take one under section 45; both to be dealt with together. *Re Family and Children's Services of City of London and County of Middlesex (full-time employees) and Ontario Public Service Employees, Local 116; Flanigan grievance*, February 20, 1982. Sheppard — 9 pages. (5)†

#### Classification

Higher-rated job performed temporarily — grievor entitled to higher rate of pay; grievance allowed. *Re Canada Packers Inc. and United Food and Commercial Workers International Union, Local 114P; Nicolson grievance*, January 20, 1982.

Majority: Weatherill, Lewis; dissent: Sargeant — 8 pages. (6)

Improper reclassification — grievor continuing to perform substantially same duties; grievance allowed. *Re Silverwood Dairies, Division of Silverwood Industries Limited, and Retail, Wholesale and Department Store Union, Local 440; Saunders grievance*, January 29, 1982. Weatherill — 8 pages. (7)

Not performing significant duties or showing ability and responsibility of higher classification — alleged promise to reclassify not established; grievance dismissed. *Re John T. Hepburn Limited and United Steelworkers of America, Local 3335; Infusino grievance*, January 27, 1982.

Majority: H.D. Brown, Bertuzzi; dissent: Falkowski — 9 pages. (8)

Overlapping duties — neither quantity or type of additional work requiring new classification or compensation; grievances dismissed. *Re Sunnyside Home, Waterloo Regional Municipality, and London and District Service Workers, Local 220; policy grievances*, January 13, 1982. Ord, Boehmer, Beaulieu; addendum: Beaulieu — 11 pages. (9)

Tool and die maker — employees making temporary tools, not performing work of tool and die makers; grievance dismissed. *Re De Havilland Aircraft of Canada Limited and United Automobile Workers of America, Local 112; union grievance*, February 5, 1982. H.D. Brown — 18 pages. (10)

#### Contracting Out

Extent of restriction — applying to contracting out resulting in denial of overtime opportunities; grievance allowed. *Re Noranda Metal Industries Limited, Fergus Division, and Local 2345, International Brotherhood of Electrical Workers; Stankovits and Atchison grievance*, February 2, 1982. R.J. Roberts — 13 pages. (11)†

Extent of restriction — sub-contract does not displace full-time employees; grievance dismissed. *Re Thibodeau Finch Express Limited and Teamsters Local 938; union grievance*, January 27, 1982. Majority: P. Picher, Peel; dissent: Stewart — 29 pages. (12)

Janitorial work — cleaning of plant offices not "maintenance" work; grievance dismissed. *Re Dow Chemical of Canada Limited and Energy and Chemical Workers Union, Local 672; group grievance*, February 15, 1982. Majority: Carter, Healy; dissent: Robbins — 12 pages. (13)

#### Damages

Recall improper — damages restricted to wages lost during the four working days which immediately precede presentation of grievance; grievance denied. *Re National Steel Car Limited and United Steelworkers of America; Binek grievance*, February 8, 1982. O'Shea — 10 pages. (14)†

#### Demotion

Apprenticeship — grievor not satisfactory in an apprenticeship program; grievance dismissed. *Re Algoma Steel Corporation Limited and United Steelworkers of America, Local 2251; Marceau grievance*, February 19, 1982.

Majority: O'Shea, Morley; dissent: Gurevitch — 16 pages. (15)

Disciplinary — mistake in giving medicine and failure to report error — employer failing to show that grievor no longer qualified; suspension substituted. *Re Caressant Care Nursing Home of Canada and Christian Labour Association of Canada; Kalbfleisch grievance*, February 4, 1982. Eaton — 23 pages. (16)†

Inability to perform assigned work — employer established that it was justified in its decision; grievance dismissed. *Re Allied Chemical Canada Limited and Local 89, United Automobile Workers of America; Cauchi grievance*, January 27, 1982. O'Shea — 15 pages. (17)

Incompetence — not correctable; grievance dismissed. *Re Kendall Canada and United Steelworkers of America, Local 8505; Dafovski grievance*, February 16, 1982. O'Shea — 18 pages. (18)

**Discharge**

Absence for more than three days — no adequate medical evidence to show satisfactory reason; grievance dismissed. *Re Pullman Trailmobile Canada Limited and United Automobile Workers of America, Local 397; Yanchus grievance*, February 19, 1982. H.D. Brown — 14 pages. (19)

Breach of company rule — driving off route and negligence in operation of a truck causing an accident; reinstated without compensation. *Re Dominion-Consolidated Truck Lines Limited (McCallum Transport Division) and Teamsters Local 938; Blakley grievance*, February 7, 1982. Brent — 17 pages. (20)

Culminating incident — failure to perform assigned work not established; grievance allowed. *Re Air King Limited and International Association of Machinists and Aerospace Workers, Lodge 1817; Keiser grievance*, February 15, 1982. Kennedy — 7 pages. (21)

Culminating incident — insubordination and steadily deteriorating work performance; grievance dismissed. *Re Dorcy Ashflash Canada Limited and United Steelworkers of America; Vanderkley grievance*, February 11, 1982.

Majority: Linden, Tarasuk; dissent: Summers — 8 pages. (22)

Failure to notify that physically fit to return to work — penalty provisions not applicable to part-time employee; reinstatement without compensation. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 414; Sciberras grievance*, January 28, 1982. Brunner, Sergeant, Spaxman — 10 pages. (23)

Fraud alleged — employee recording own shift production, fragmentary and unsatisfactory evidence failing to show misrepresentation; grievance allowed. *Re Spalding Canada Brantford and International Woodworkers of America; Thorne grievance*, January 28, 1982. Majority: Brunner, Bloom; dissent: Joyce — 17 pages. (24)

Insubordination — failure to follow instructions and to return vehicle on time — long disciplinary record; grievance dismissed. *Re Toronto, Corporation of City of, and Metropolitan Toronto Civic Employees Union, Local 43; Finn grievance*, February 22, 1982. Saltman, Milks, Tate — 14 pages. (25)

Marijuana used after commencement of shift — grievor admitting involvement; reinstatement without compensation. *Re Abbott Laboratories Limited and Retail, Wholesale and Department Store Union, Local 440; Atkinson grievance*, January 25, 1982. O'Shea, Wightman, McNevin — 14 pages. (26)\*

Probationary employee — poor job performance alleged — grievor not advised of expected job performance; grievance arbitrable and grievor reinstated as a probationary employee with compensation. *Re Meadow Park Nursing Home and London and District Service Workers Union, Local 220; Favalaro grievance*, February 5, 1982. Majority: Baum, Switzman; dissent: Mustard; addendum: Switzman — 22 pages. (27)

Quit alleged — quit not established but poor work performance justifying discharge; grievance dismissed. *Re Mack Canada Inc. and International Association of Machinists and Aerospace Workers, Lodge 2281; Granic grievance*, February 4, 1982. Kennedy — 16 pages. (28)\*

Theft — refusal to co-operate in search for missing tool found in grievor's tool box; previous suspension for theft; grievance dismissed. *Re Fleet Industries, Division of Ronyx Corporation Limited, and Frontier Lodge 171, International Association of Machinists and Aerospace Workers; Brown grievance*, February 1, 1982. O'Shea — 27 pages. (29)

Unauthorized absence — grievor leaving to visit ill mother after leave of absence refused — employer not acting arbitrarily, in bad faith or in discriminatory manner; grievance dismissed. *Re Woods Bag and Canvas Company Limited and Canadian Textile and Chemical Union, Local 530; Persaud grievance*, February 9, 1982. Majority: Kennedy, McKeown; dissent: Bosnich — 10 pages. (30)

Unjust dismissal under section 61.5 of *Canada Labour Code*; drinking before company meeting — not on regular duty; mitigating circumstances; reinstatement with partial compensation. *Re Eastern Airlines and Harold J. Mayhew*, February 25, 1982. H.D. Brown — 26 pages. (31)

Unauthorized entry into company premises alleged — identification evidence relied upon questionable; grievance allowed — reinstatement with compensation. *Re Quaker Oats Company of Canada Limited and United Food and Commercial Workers, Local 293-1; Hetherton grievance*, January 30, 1982. Davis — 21 pages. (32)†

Unsafe, deliberate act committed by grievor — no expectation that discharge would result from actions; grievance allowed in part. *Re Gates Canada Inc. and United Rubber, Cork, Linoleum and Plastic Workers of America, Local 733; DeMelo grievance*, February 19, 1982. Black — 9 pages. (33)†

Leaving early and falsifying time cards and production records — concerted behavior — mitigating factors minimal compared with gravity of offence; grievances dismissed.

*Re Boston Insulated Wire and Cable Company Limited and United Electrical, Radio and Machine Workers of America, Local 520; Hermann et al grievances*, February 9, 1982. Rose — 21 pages. (34)†

**Discipline**

Holding back of pay coupons resulting in two days suspension — no evidence of misrepresentation of earnings; grievance allowed. *Re Florsheim Inc., Manufacturing Plant No. 7, London, and Amalgamated Clothing and Textile Workers Union — Shoe Division, Local 300; Lukings grievance*, February 9, 1982. Brent — 5 pages. (35)†

Absence from work without leave and unauthorized use of company property — written warning justified; grievance allowed. *Re Ignace, Corporation of Town of, and Canadian Union of Public Employees, Local 87; Ibey grievance*, February 8, 1982. Adamson — 21 pages. (36)†

Illegal strike — improper discrimination not established; grievance dismissed. *Re Budd Canada Inc. and United Automobile Workers of America, Local 1451; Brown grievance*, February 22, 1982. H.D. Brown — 41 pages. (37)

Insubordination — argument with supervisor — previous discipline; grievance dismissed. *Re Inn on the Park Toronto and Hotel, Restaurant and Cafeteria Employees Union, Local 75; Glykis grievance*, December 16, 1981. Teplitsky, Tate, Sanderson — 6 pages. (38)

Insubordination — profane and insulting language to member of management; grievance dismissed. *Re E.B. Eddy Forest Products Limited and Canadian Paperworkers Union, Local 74; Duranlean grievance*, February 1, 1982. Davis — 11 pages. (39)†

Procedure — notification of suspension — time running from start rather than finish of shift and suspension notice out of time; grievance allowed. *Re Standard Tube Canada Limited and United Automobile Workers of America, Local 636; Bourgoain grievance*, February 3, 1982. O'Shea — 10 pages. (40)

Procedure — timeliness — company required to discipline five working days after completion of investigation; no limit on amount of time allowed for investigation. *Re Silverwood Dairies, Division of Silverwood Industries Limited, and Canadian Union of Operating Engineers and General Workers; James and Spooner grievance*, February 24, 1982. O'Connor — 8 pages. (41)\*†

Unauthorized break alleged — grievance settled on consent of the parties. *Re Brampton, Corporation of City of, and Canadian Union of Public Employees, Local 831; Patrick grievance*, January 27, 1982. Jolliffe — 3 pages. (42)†

Work performance — poor work not established; grievance allowed. *Re Ignace, Corporation of Town of, and Canadian Union of Public Employees, Local 87; Zappitelli grievance*. See (36), *supra*. (43)†

Work performance unsatisfactory — one-day suspension — company standards reasonable; grievance dismissed. *Re Great Atlantic and Pacific Company Limited and Retail, Wholesale and Department Store Union, Local 414; Scammell grievance*, February 10, 1982. Majority: H.D. Brown, Winkler; dissent: Spaxman — 19 pages. (44)\*

**Employment Status**

Full-time status is issue — full-time status established; grievance dismissed. *Re Errinrung Limited and Christian Labour Association of Canada; Garon grievance*, January 21, 1982. Sheppard — 7 pages. (45)†

Sessional employee — board finding that grievor a sessional employee for part of alleged probation period; correct termination notice given; grievance dismissed. *Re Ontario Council of Regents for Colleges of Applied Arts and Technology (Northern College) and Ontario Public Service Employees Union; Beddard grievance*, January 27, 1982. McLaren, Craven, Ronson — 13 pages. (46)

Sessional rather than part-time appointment claimed — provisions for semester hours intended to regulate workload rather than create sessional appointments; grievances dismissed. *Re Ryerson Polytechnical Institute and Canadian Union of Educational Workers; Makaryk et al grievances*, February 5, 1982. Majority: Adams, Rogers; dissent: Myhr — 50 pages. (47)

**Evidence**

Collateral evidence — statistics of promotions, past practices of sex discrimination, and implementation of an affirmative action policy; evidence not admitted. *Re Windsor Board of Education and Federation of Women Teachers' Associations of Ontario; Taylor grievance*, January 20, 1982. Majority: Gorsky, Bartlet; dissent: Backhouse; addendum: Bartlet — 23 pages. (48)\*

Hearsay — employer seeking to introduce production records made by employees; not admissible as proof of contents. *Re Spalding Canada Brantford and International Woodworkers of America; Thorne grievance*. See (24), *supra*. (49)

Trial transcript — transcript would establish why employees were disciplined; transcript admissible. *Re Silverwood Dairies, Division of Silverwood Industries Limited, and Canadian Union of Operating Engineers and General Workers; James and Spooner grievance*. See (41), *supra*. (50)\*

**Grievance Procedure**

Timeliness — no reasonable grounds for extension under section 44(6); grievance not arbitrable. *Re Casselholme Home for the Aged, Board of Management of, District of Nipissing East, and Canadian Union of Public Employees, Local 146; Savard grievance*, February 25, 1982. H.D. Brown Fortin, Butler — 14 pages. (51)\*

**Holiday Pay**

Calculation — "normal shift" referring to regular straight-time shift — to be based on longer shift where applicable; grievance allowed. *Re Victoria Hospital Corporation and London and District Service Workers' Union, Local 220; group grievance*, February 8, 1982. Majority: Saltman, Walsh; dissent: Healy — 15 pages. (52)

Qualifying shift — leaving early causing pro-rata reduction in holiday pay — absence of evidence supporting alleged illness; grievance dismissed. *Re Koehring Canada Limited and International Association of Machinists and Aerospace Workers; People grievance*, January 22, 1982. Prichard, Parry, Lewis; addendum: Lewis — 9 pages. (53)

**Interpretation**

Ambiguity — lack of job descriptions in collective agreement creating ambiguity. *Re Windsor Western Hospital Centre Inc. (I.O.D.E. Unit) and Service Employees Union, Local 210; union grievance*, February 24, 1982. Majority: Brunner, Bartlet; comment: Bounsal — 17 pages. (54)

Past practice — language clear; past practice not to be considered. *Re Peace Bridge Area Association for Mentally Retarded and Canadian Union of Public Employees, Local 2276; union grievance*, February 10, 1982. O'Connor — 8 pages. (55)

**Job Vacancy**

Existence of vacancy — employer permitted to assign some of existing duties to supervisor and eliminate job; grievance dismissed. *Re Abitibi-Price Inc., Smooth Rock Falls Division, and Canadian Paperworkers Union, Local 32; union grievance*, February 8, 1982. Majority: H.D. Brown, Porter; dissent: Weisbach — 12 pages. (56)

**Lay-off**

Bumping rights — grievor was bumped by a person of less plant seniority but with higher job rating; grievance dismissed. *Re Cryovac Division of W.R. Grace and Company of Canada Limited and Canadian Union of Operating Engineers and General Workers, Local 101; Szilardi grievance*, February 2, 1982. Samuels — 6 pages. (57)†

Bumping rights — job bid system prevails until after first day of lay-off in collective agreement; grievance dismissed. *Re Capital City Transport Limited and Teamsters Union, Local 91; Lacelle grievance*, February 12, 1982. Bernstein — 7 pages. (58)†

Bumping rights — senior employees not offered work on one-day lay-off in accordance with their training experience and qualifications; grievances allowed. *Re Cornwall Spinners Limited and Amalgamated Clothing and Textile Workers Union; Agh, Cardinal, Dube, McNaughton and Savard grievances*, February 3, 1982. Fraser — 15 pages. (59)†

Bumping rights — short term lay-off; only departmental seniority applying; grievance dismissed. *Re Chubb Security Safes (Chubb Industries Limited) and Teamsters Chemical, Energy and Allied Workers Union, Local 1618; policy grievance*, February 22, 1982. Weatherill — 7 pages. (60)

Lay-off of many in lower classification while some of the work being done by employees in higher classification — no prohibition in collective agreement; grievance dismissed.

*Re Couchman Trade Bindery Limited and Graphic Arts International Union, Local 28-B; union grievance*, January 27, 1982. Majority: McLaren, Davies; dissent: Zajac — 13 pages. (61)

Qualifications — grievor denied experience credit for teaching night school course — policy grievance dismissed; individual grievance allowed. *Re East York Board of Education and Ontario Secondary School Teachers' Federation, District 51; policy grievance and Chudak grievance*, February 12, 1982. Majority: Kennedy, Lewis; dissent: Baker; addendum: Lewis — 20 pages. (62)

**Overtime**

Distribution — grievor did not normally perform work required — had not signed volunteer list; grievance dismissed. *Re Chromasco Limited and United Steelworkers of America, Local 4632; Leyte grievance*, January 29, 1982. O'Shea — 13 pages. (63)

Distribution — work granted to employees in wrong classification; grievance allowed. *Re Sheldons Engineering Limited and United Steelworkers of America, Local 2931; Browning grievance*, January 5, 1982. Geddes — 3 pages. (64)†

Entitlement — grievor on scheduled day off having no right to claim overtime; grievance dismissed. *Re Boise Cascade Canada Limited and United Paperworkers International Union, Local 92; Mihichuk grievance*, February 16, 1982. O'Shea — 13 pages. (65)

Remedy for improper distribution — compensatory opportunity for overtime to be provided; grievance allowed. *Re Ignace, Corporation of Town of, and Canadian Union of Public Employees, Local 87; Zappitelli grievance*, February 8, 1982. Adamson — 21 pages. See (36, 43), *supra*. (66)†

**Promotion**

Qualifications — grievor did not possess the required language skills; grievance dismissed. *Re Bell Canada and Communications Workers of Canada; Sicat grievance*, February 4, 1982. Majority: P. Picher, Churchill-Smith; dissent: Robbins — 24 pages. (67)

Qualifications — grievors not equally qualified or possessing more seniority than successful candidate; grievance denied. *Re Atomic Energy of Canada Limited and Public Service Alliance of Canada, Local 70367; group grievance*, January 28, 1982. Weatherill, Harnden, Healy — 11 pages. (68)

Qualification for lead hand position — senior grievor lacking experience and knowledge; grievance denied. *Re AEL Microtel Limited and International Union of Electrical, Radio and Machine Workers, Local 526; Porter grievance*, February 11, 1982. Bernstein — 7 pages. (69)†

Qualifications — training programme not completed; grievor not qualified; grievance dismissed. *Re Air Canada and Canadian Air Line Flight Attendants Association; Djordjevitch grievance*, February 19, 1982. Beatty — 9 pages. (70)

Qualifications — senior employee deficient in training; present abilities and qualifications inadequate; grievance dismissed. *Re Kodak Canada Inc., and Employees' Association of Kodak Canada; Schutt grievance*, February 2, 1982. O'Connor — 6 pages. (71)†

Successful applicant outside bargaining unit — did not meet posted job requirements — new posting required; grievance allowed. *Re Laurentian Hospital, Sudbury, and Canadian Union of Public Employees, Local 161; union grievance*, February 10, 1982. Lunney — 7 pages. (72)

Temporary promotion — employer must consider adequacy of senior employee to establish inadequacy; grievance allowed. *Re Dresser Industries Canada Limited and United Steelworkers of America; Rose grievance*, February 16, 1982. R.J. Roberts — 9 pages. (73)

#### **Reporting Pay**

Breakdown in water pipe — company has not met onus to show incident beyond its control; grievance allowed. *Re Multi Fittings Limited and International Molders and Allied Workers Union, Local 49; group grievance*, February 11, 1982. Hinnegan — 7 pages. (74)

Failure to provide work without notifying employees — employer having the right to stop work because of bomb threat; grievance dismissed. *Re Amoco Fabrics Limited and International Woodworkers of America; union grievance*, January 20, 1982. Majority: Weatherill, Pogson; dissent: Smiley — 7 pages. (75)

#### **Res Judicata**

Prior award for reinstatement without back pay — full and final disposition precluding subsequent claim for medical expenses incurred while discharged; grievance dismissed. *Re Inco Metals Company and United Steelworkers of America; Dworski grievance*, January 18, 1982. Majority: Weatherill, Kort; dissent: Gareau — 10 pages. (76)\*

#### **Seniority**

Extent of seniority rights — applicable to promotions and lay-off but not to shift assignment and working hours; grievance dismissed. *Re Amoco Fabrics Limited and International Woodworkers of America, Local 2-600; L'Ecuyer grievance*, February 11, 1982. Bernstein — 6 pages. (77)†

Extent of seniority rights — job bid system prevents operation of seniority rights until after first day of lay-off. *Re Capital City Transport Limited and Teamsters Union, Local 91; Lacelle grievance*. See (58), *supra*. (78)†

Loss of seniority resulting from unexcused absence — mitigating circumstances overridden by specific penalty provision; grievance dismissed. *Re Franklin Manufacturing (Canada) Limited and International Association of Machinists and Aerospace Workers, Local 1246; Shea grievance*, February 3, 1982. Majority: Kennedy, Sargeant; dissent: Jardine — 10 pages. (79)

#### **Sick Pay**

Calculation — "full rate" — employee entitled to equivalent of regular shift pay; grievance allowed. *Re Victoria Hospital Corporation and London and District Service Workers' Union, Local 220; group grievance*. See (52), *supra*. (80)

#### **Temporary Employees**

Calculation of service — grievor did not complete two years of aggregate service in four years; grievance dismissed. *Re Toronto, Municipality of Metropolitan, and Metropolitan Toronto Civic Employees Union, Local 43; Francis grievance*, February 4, 1982. Brunner, Beresford, Tate; addendum: Tate — 11 pages. (81)

#### **Transfer**

Temporary transfer — grievor not the least senior — employer failing to justify on basis of business requirements; grievance allowed. *Re Burns Meats Limited and United Food and Commercial Workers International Union, Local 139; Synek grievance*, February 1, 1982. Adamson — 10 pages. (82)†

#### **Union Officials**

Reimbursement for time at meetings — company failed to pay wages to union stewards for attendance at labour-management meetings; grievance allowed. *Re Provost Industrial Tankers Limited and Christian Labour Association of Canada; policy grievance*, February 8, 1982. O'Connor — 6 pages. (83)

#### **Vacations**

Entitlement for period ending September — vacation to be taken between May and September of following year; grievance dismissed. *Re Wellesley Hospital and Service Employees Union, Local 204; union grievance*, January 28, 1982. Brunner, Stewart, Craven; addendum: Craven — 10 pages. (84)

Scheduling — plant shut-down for vacations — no express provision guaranteeing convenience in scheduling; grievance dismissed. *Re Chromasco Limited and United Steelworkers of America, Local 6426; union grievance*, December 22, 1981. Roach — 13 pages. (85)

#### **Vacation Pay**

Calculation — both employer and union method of calculation incorrect; grievance allowed in part. *Re AEL Microtel Limited and International Union of Electrical, Radio and Machine Workers, Local 526; group grievance*, January 25, 1982. Bernstein — 11 pages. (86)†

Calculation — to be based on straight-time hours worked — longer shifts to be included; grievance allowed. *Re Victoria Hospital Corporation and London and District Service Workers' Union, Local 220; group grievance*. See (52, 80), *supra*. (87)

**Wages**

Amount and obligation to pay agreed — failure to pay due to lack of funds; grievance allowed. *Re Thames Valley Ambulance Limited and London Ambulance Attendants' Association; group grievance*, February 4, 1982. Hinnegan — 3 pages. (88)†

Piecework rates — proper general increase given — earlier higher rate a result of error properly corrected with notice to union; grievance dismissed. *Re House of Braemore Furniture Limited and Upholsterers' International Union of North America; policy grievance*, February 18, 1982.

O'Connor — 9 pages. (89)†

Progression — employer making *bona fide* review — board lacking jurisdiction to interfere with management decision; grievance dismissed. *Re Hydro Electric Commission of Corporation of City of North York and Canadian Union of Public Employees, Local 11; Fortner grievance*, February 3, 1982. Dunn, Millman, Griffin — 7 pages. (90)

**Welfare Plans**

Dental plan — collective agreement not requiring employer to update plan to take into account increases in dental tariff; grievance dismissed. *Re Canwirco Inc., Belleville Division, and United Electrical, Radio and Machine Workers of America, Local 554; union policy grievance*, January 29, 1982. P. Draper, Brady, Russell — 10 pages. (91)

Long term disability — benefits payable only if employment relationship continuing when benefits claimed; grievance dismissed. *Re Ontario Hydro and Richard L. Hearn TGS Unit of Canadian Union of Operating Engineers and General Workers; Tziros grievance*, February 1, 1982. Kennedy — 6 pages. (92)†

Failure of dental insurer — employer having fulfilled obligations by arranging and contributing to agreed policy — parties jointly responsible for replacement; grievance dismissed. *Re West Parry Sound Board of Education and Ontario Secondary School Teachers' Federation, District 40; group grievance*, February 15, 1982. Hinnegan, Rogers, Felker — 6 pages. (93)

**Work Assignment**

Deprivation of overtime opportunity — driver loaders not to be given driving assignments which would deprive regular drivers of overtime opportunities; grievance allowed. *Re Steinberg Inc. (Miracle Food Mart Division), and Teamsters Union Local 419; union grievance*, February 12, 1982.

O'Shea — 15 pages. (94)†

Change in practice of assigning task to one classification — job description restricting management rights; grievances allowed. *Re Ex-Cell-O Corporation of Canada Limited, North American Special Machine Division, and International Molders and Allied Workers Union, Local 49; Johnston et al grievances*, February 3, 1982. Brent — 10 pages. (95)

New duties — cleaning wheelchairs — reasonable affinity to main core of grievor's duties and within management rights provisions; grievance dismissed. *Re Windsor Western Hospital Centre Inc. (I.O.D.E. Unit) and Service Employees Union, Local 210; union grievance*. See (54), *supra*. (96)

**Construction Industry Awards — Ontario**

**Labour Relations Board**, filed during the month of February, 1982.

**Collection**

Delay in payment of wages alleged — mailed to employees within forty-eight hours, received later; no waiting penalty payable; grievances dismissed. *Re Carwood Store Fixtures Limited and United Brotherhood of Carpenters and Joiners of America, Local 38; Haushar and O'Shea grievances*, December 23, 1981. Majority: Furness, Ade; dissent: Ballantine — 7 pages. (97)

Delay in vacation pay payment — interest penalty payable if late; grievance allowed. *Re James Kemp Construction Limited and United Brotherhood of Carpenters and Joiners of America, Local 18; union grievance*, December 18, 1981. Furness, Ballantine, Donnelly — 4 pages. (98)

Union dues, vacation pay and welfare fund — trustee of fund may direct employer re mode of payment — separate cheque; grievance allowed. *Re P.J. Daly Contracting Limited and United Brotherhood of Carpenters and Joiners of America, Local 18; union grievance*, December 18, 1981. Furness, Ballantine, Donnelly — 4 pages. (99)

Welfare payments, union dues and vacation pay — payment ordered. *Re Nadalin Contractor Floor and Wall Coverings Limited and Ontario Provincial Conference of International Union of Bricklayers and Allied Craftsmen; union grievance*, January 25, 1982. Satterfield, Murray, Hodges — 5 pages. (100)

**Collective Agreement**

Unlawful strike forcing employer to sign agreement — agreement invalid. *Re Traugott Construction Limited and International Union of Operating Engineers, Local 793; union grievance*, November 27, 1981. Majority: Franks, Wightman; dissent: Rutherford — 16 pages. (101)

**Damages**

Duty to mitigate — burden of proof of failure to mitigate loss on party so alleging — not met by employer; grievance allowed. *Re George Ryder Construction Limited and Carpenters District Council of Toronto (Locals 27, 666, 681, 1133, 1304, 1747, 1963, 3227 and 3233); union grievance*, December 3, 1981. Majority: Franks, Fenwick; addendum: Wightman — 8 pages. (102)

**Discharge**

Union steward — discharge for union activities; reinstatement ordered. *Re Bellai Brothers Limited and United Brotherhood of Carpenters and Joiners of America, Local 93; union grievance*, January 15, 1982. Franks, Ronson, Rutherford — 4 pages. (103)

**Interpretation**

Ambiguity — “jobsite location” sufficiently ambiguous to justify use of extrinsic evidence. *Re Lewis Insulation Services Inc. and International Association of Heat and Frost Insulators and Asbestos Workers, Local 95; union grievance*, November 10, 1981. Satterfield, Ronson, Kobryn — 3 pages. (104)

**Procedure**

Sub-contracting grievance — adjournment to allow employer to file jurisdictional dispute. *Re Napev Construction Limited and Carpenters' District Council of Toronto (Locals 27, 666, 681, 1133, 1747, 1963, 1304, 3327 and 3233); union grievance*, January 18, 1982. MacDowell, Wilson, Hodges — 7 pages. (105)

**Sub-Contracting**

Horticultural work — agreement required employer to subcontract only to employers with contractual relations with union or its affiliated bargaining agents; agreement lawful. *Re Jackson-Lewis Company Limited and Labourers International Union of North America; union grievance*, December 14, 1981. Satterfield, Wilson, Kobryn — 12 pages. (106)

**Travel Allowance**

Calculation — eligibility held to depend upon distance of employee's residence to jobsite; grievance allowed. *Re Tesc Contracting Limited, Acme Building and Construction Limited, Tripp Construction, and Labourers' International Union; union grievance*, December 3, 1981. Franks, Ronson, Ballentine — 10 pages. (107)

**The Hospital Labour Disputes Arbitration Act**

The following interest arbitration awards under *The Hospital Labour Disputes Arbitration Act* were filed with the Office of Arbitration during the month of February, 1982.

*Bethany Lodge Nursing Home, Lambeth, and London and District Service Workers' Union, Local 220* (final award). V.E. Scott; partial dissent: Perkins; partial dissent to follow: Switzman — 29 pages.

*Cedarcrest Nursing Home and Health, Office and Professional Employees Union, Local 206*. Linden, Valin, Robbins — 3 pages.

*Lincoln Place Nursing Home and Ontario Nurses' Association* (final award). Majority: Saltman, Switzman; partial dissent: Brady — 15 pages.

*St. Joseph's Hospital, London, and London and District Service Workers' Union, Local 220 (technical employees)*. Majority: Barton, Mustard; dissent to follow: Switzman; addendum: Mustard — 27 pages.

*St. Mary's General Hospital and London and District Service Workers' Union, Local 220 (office and clerical)*, (final award) Saltman, Filion, Switzman — 23 pages.

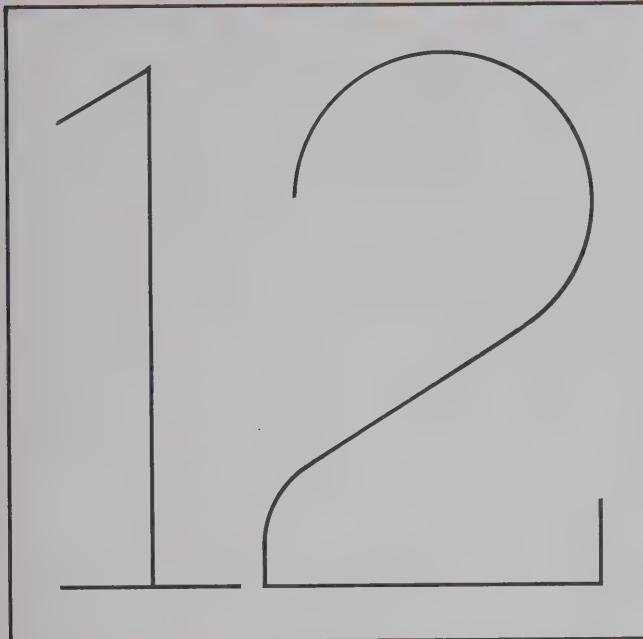
*Madame Vanier Children's Services and Ontario Public Service Employees Union, Local 114*. Majority: Lunney, Walsh; dissent to follow: Carrier; addendum: Walsh — 42 pages.

**Filing Awards**

The attention of chairmen of boards of arbitration and sole arbitrators is drawn to the regulations under *The Labour Relations Act* which require every arbitrator to file a copy of his award with the Office of Arbitration within ten days of issuing such award.

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# Monthly Bulletin



Ontario Ministry of Labour



Hon. Russell H. Ramsay, Minister  
T.E. Armstrong, QC, Deputy Minister

Office of Arbitration  
400 University Avenue, 6th Floor  
Toronto, Ontario  
M7A 1T7  
Tel. (416) 965-5669

Miss Jean M. Read, Director

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persons involved in labour-management  
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## Purchase of Awards

Due to increasing demand for the supply of awards, immediate service can no longer be guaranteed. For quantities in excess of twenty pages, lead time of forty-eight hours should be allowed. Also, copies of awards dated prior to 1976, which must be retrieved from storage, cannot be supplied in less than one week.

All awards listed in the *Monthly Bulletin* may be reviewed at the Office of Arbitration, 400 University Avenue, 6th Floor, Toronto, Ontario, M7A 1T7. Copies may be purchased for a fee of 50¢ per page and orders will be filled upon receipt of a request and a cheque or money order payable to the Treasurer of Ontario, for the applicable amount.

## Appointment of Arbitrators

Forms for requests for appointment of arbitrator under section 45 of *The Labour Relations Act* are available on request, from the Office of Arbitration.

## Grievance Arbitration

The following awards were filed with the Office of Arbitration during the month of March, 1982. The summary was prepared under the supervision of C.G. Simmons, B.A., B.C.L., LL.M.; D.D. Carter, B.A., B.C.L., LL.B. and K.P. Swan, P. Eng., LL.B.

\* Indicates award to be reported in full or in part in *Labour Arbitration Cases*.

† Indicates award issued under section 45 of *The Labour Relations Act*.

## Arbitrability

Individual grievance relating to contracting out — grievor having standing as steward and in personal capacity; declaration only possible relief as grievor not in group for which compensation sought; no status to grieve lack of notice to union. *Re Dow Chemical of Canada Ltd. and Oil, Chemical and Atomic Workers International Union; Butler grievance*, March 5, 1982. Majority: Saltman, Beaulieu; dissent: Bertuzzi — 7 pages. (1)

Poor supervision causing loss of money to grievors alleged—no misinterpretation, misapplication or violation of collective agreement alleged; board lacking jurisdiction. *Re Storwal International Inc. and United Steelworkers of America, Local 3257; Belair et al grievance*, March 1, 1982. Fraser — 6 pages. (2)†

Seasonal employee — provision for access to grievance procedure not qualified by unilateral letter of understanding; grievance arbitrable. *Re Labatt's Ontario Breweries Division of Labatt Brewing Company Ltd. (London Plant) and National Brewery Workers' Union, Local 1; Gifford grievance*, February 17, 1982. McLaren — 20 pages. (3)

Settlement of earlier grievance raising identical issue — grievance not arbitrable. *Re Thunder Bay, Corporation of City of, and Local 87, Canadian Union of Public Employees; Peterson grievance*, March 24, 1982. Davis — 12 pages. (4)†

#### Bargaining Unit

Office staff; employees treated by parties as office staff because of clerical duties — long-standing acquiescence by union; grievance dismissed. *Re Genstar Stone Products Inc. and United Cement, Lime and Gypsum Workers International Union, Local 494; policy grievance*, March 10, 1982. Majority: Brunner, Cosburn; dissent: Nokes — 11 pages. (5)

Pre-natal instructors — instructional work rather than nursing care; grievance dismissed. *Re St. Mary's General Hospital, Kitchener, and Ontario Nurses' Association; union grievance*, February 25, 1982. Majority: Brunner, Cook; dissent: McIntyre — 17 pages. (6)

#### Classification

Higher rate claimed — grievor not doing work of higher classification; grievance dismissed. *Re Ottawa Civic Hospital, Trustees of, and Canadian Union of Public Employees, Local 576; Horbik grievance*, February 23, 1982. Roach — 5 pages. (7)†

Two classifications containing elements of layout function — layout classification dormant for many years; grievance dismissed. *Re Collingwood Shipyards and United Steelworkers of America, Local 6320; Johnson grievance*, February 1, 1982. Rayner, Edwards, Lanigan — 12 pages. (8)

#### Collective Agreement

Retroactivity — wages for employees who ceased employment in bridge period — wages payable for hours worked from commencement date of new agreement; grievance allowed. *Re Brampton, Corporation of City of, and Amalgamated Transit Union, Local 1573; policy grievance*, March 17, 1982. Kennedy — 11 pages. (9)†

#### Contracting Out

Regular maintenance and repairs on shutdown holiday — applicants for maintenance helper positions not from listed departments — employer entitled to supplement regular crew with contractor; grievance dismissed. *Re Boise Cascade Canada Ltd. and International Association of Machinists and Aerospace Workers, Lodge 771; lodge grievance*, March 17, 1982. Brunner — 11 pages. (10)

Reorganization of work — not constituting contracting out; grievance denied. *Re Canadian Appliance Manufacturing Company Ltd. and United Steelworkers of America, Local 7921; union grievance*, December 16, 1981. Shime — 9 pages. (11)

Safety risk — bargaining unit personnel not equipped to handle work; grievance dismissed. *Re Firestone Canada Inc. (Hamilton Plant) and United Rubber, Cork, Linoleum and Plastic Workers of America, Local 113; group grievance*, March 8, 1982. Willes — 9 pages. (12)†

Skilled trades work — company's right to assign work not constrained by collective agreement; grievance denied. *Re Wallace Barnes Company Ltd. and United Steelworkers of America, Local 8761; group grievance*, March 17, 1982. R. J. Roberts — 6 pages. (13)†

Stock-taking contracted out for valid business reasons — major change requiring notice to union — declaration of violation and damages awarded. *Re Dominion Stores Ltd. and Retail, Wholesale and Department Store Union; Spence grievance*, March 9, 1982. Majority: Prichard, Spaxman; dissent: Sargeant — 11 pages. (14)\*

#### Damages

Contracting out — employer not notifying union — damages based on lost opportunity to dissuade employer to be given to union in trust for affected employees. *Re Dominion Stores Ltd. and Retail, Wholesale and Department Store Union; Spence grievance*. See (14), *supra*. (15)\*

Improper termination — damages to be limited to period of one year where no reinstatement. *Re Canada Brick Company Ltd. and United Glass and Ceramic Workers of North America, Local 225; Kristo grievance*, February 26, 1982. Kennedy, Tarasuk, Currie — 7 pages. (16)\*

Settlement giving grievor amount of regular salary — grievor entitled to increase resulting from implementation of new collective agreement. *Re A.D.T. Security Systems and International Brotherhood of Electrical Workers, Local 636; Hammill grievance*, February 26, 1982. Majority: P. Picher, Cavalluzzo; dissent: McNaughton — 21 pages. (17)

#### Demotion

Conditional appointment — grievor unable to meet a condition of his appointment; grievance dismissed. *Re Brewers' Warehousing Company Ltd. and United Brewers' Warehousing Workers' Provincial Board; Street grievance*, March 1, 1982. Weatherill — 7 pages. (18)

Removal from apprenticeship programme — employer failing to provide necessary training; reinstatement without compensation. *Re Adams Mine-Cliffs of Canada, Limited, Manager, and United Steelworkers of Canada, Local 6409; Zemlickis grievance*, March 15, 1982. O'Shea — 27 pages. (19)

Trainee failing job-relating test — test reasonable and fair and employer entitled to require it; grievance dismissed. *Re Plastomer, Division of Consumers Glass Company Ltd., and United Rubber, Cork, Linoleum and Plastic Workers of America, Local 722; Snider grievance*, March 9, 1982. O'Shea — 12 pages. (20)

**Discharge**

Absence due to illness — benefits expired and no prospect of ability to return; grievance dismissed. *Re Collingwood, Corporation of Town of, and Canadian Union of Public Employees, Local 1217; union grievance re McSorley (deceased)*, February 28, 1982. Houston — 14 pages. (21)†

Absence from work — grievor refusing to provide sufficient and reasonable medical evidence for absence; insubordination and disruption of other's work; grievance dismissed. *Re Neelon Casting Ltd. and United Steelworkers of America, Local 6363; Barriere grievance*, February 18, 1982. Majority: Palmer, Ronson; dissent: McVey — 19 pages. (22)

Absent without satisfactory explanation — grievor losing seniority rights; grievance denied. *Re Allied Chemical Canada Ltd., Amherstburg, and United Automobile Workers of America, Local 89; Federico grievance*, March 11, 1982. Samuels — 9 pages. (23)

Absenteeism — excessive absenteeism and poor work record; grievance dismissed. *Re Toronto Star Newspapers Ltd. and Newspaper Guild, Local 87; Marengeur grievance*, March 4, 1982. Brunner — 12 pages. (24)

Absenteeism — probability of future absenteeism not established; conditional reinstatement. *Re Consolidated-Bathurst Packaging Ltd. and International Woodworkers of America, Local 2-69; McConachie grievance*, March 16, 1982. Majority: Howe; partial dissents: Schuster, Douglas — 27 pages. (25)

Absenteeism — final warning letter preceding discharge — discharge excessive; six-week suspension substituted. *Re Falconbridge Nickel Mines Ltd. and Sudbury Mine, Mill and Smelter Workers' Union, Local 598; Gratton grievance*, March 11, 1982. Majority: Saltman, McIntyre; dissent: Valin — 11 pages. (26)

Absenteeism — grievor accumulating quantity of demerit points causing dismissal — system flexible and some absences due to illness; suspension substituted and some demerit points rescinded. *Re Algoma Steel Corporation Ltd. and United Steelworkers of America, Local 2251; Cairns grievance*, March 4, 1982. Jolliffe — 21 pages. (27)†

Absenteeism — major portion due to illness although balance of record bad — not established that grievor incapable of regular future attendance; reinstatement contingent upon regular attendance ordered. *Re OC Transport and Amalgamated Transit Union, Local 279; Wilkes grievance*, March 23, 1982. Majority: Gorsky, Emond; dissent: Hayter — 9 pages. (28)

Absenteeism; mentally handicapped grievor with serious attendance problems — emotional difficulties much improved; reinstatement without compensation and subject to conditions. *Re Coca-Cola Limited and Soft Drink Workers' Joint Local Executive Board; Taylor grievance*, February 26, 1982. Teplitsky — 5 pages. (29)

Abusive language and poor attitude toward administrative personnel — principle of progressive discipline applicable; discharge reduced to suspension without pay. *Re Nel-Gor Castle Nursing Home and Canadian Union of Public Employees, Local 2225; Colliss grievance*, February 18, 1982. Eaton — 40 pages. (30)†

Assault on foreman — grasping of shirt not a physical attack; grievor not violent person and confused about role as grievance committee member; suspension substituted. *Re American Can Canada Inc. Woodlands and Lumber and Sawmill Workers Union, Local 2693; Boisvert grievance*, March 17, 1982. O'Connor, Bosnich, Werry — 7 pages. (31)

Assault on supervisor at tavern where employees gathered; revenge for incident at work — detrimental effect on employer because supervisor's authority weakened; grievance dismissed. *Re John Wood Manufacturing Ltd. and United Automobile Workers of America, Local 124; Smith, Hagan grievances*, March 19, 1982. H.D. Brown — 49 pages. (32)

Carelessness resulting in extensive damage to company — grievance dismissed. *Re Certified Automotive Products (Central) Ltd. and United Steelworkers of America, Local 14831; Shipkula grievance*, March 1, 1982. Hinnegan — 4 pages. (33)

Conduct improper — custodian exercising unauthorized discipline and behaving in vulgar manner with students — quick succession of complaints in serious situation justifying speedy and severe action; grievance dismissed. *Re Northumberland and Newcastle Board of Education and Canadian Union of Public Employees, Local 1206; Hickey grievance*, February 25, 1982. P. Draper — 13 pages. (34)†

Conflict of interest — planner purchased land within scope of his work; not warned of jeopardy by superiors; reinstatement without compensation. *Re Ottawa-Carleton, Regional Municipality of, and Civic Institute of Professional Personnel of Ottawa-Carleton; Hunter grievance*, December 15, 1978. Finkelman — 29 pages. (35)

Consumption of alcohol while working as driver — subsequent rehabilitation efforts; reinstatement without compensation and subject to conditions. *Re Toronto, Corporation of the City of, and Metropolitan Toronto Civic Employees' Union, Local 43; Perkins grievance*, March 10, 1982. Lederman, Milks, Tate — 17 pages. (36)

Conviction under criminal code for theft — grievor suffering complete memory blackout at time of theft; evidence that grievor would conduct himself properly in future; grievance allowed. *Re Canada Safeway Ltd. and United Food and Commercial Workers International Union, Locals 206 and 486; Vacca grievance*, March 19, 1982. Egan — 11 pages. (37)

Culminating incident — grievor's record not indicating necessity of such a harsh penalty; grievance allowed. *Re Canadian Carborundum Ltd., Niagara Falls, and United Steelworkers of America, Local 4151; McCracken grievance*, March 1, 1982. Majority: Brent, Summers; dissent: Zapalowski — 16 pages. (38)

Culminating incident — insubordination; grievance denied. *Re Consolidated-Bathurst Packaging Ltd. and International Woodworkers of America; Nieuwhof grievance*, February 23, 1982. Majority: Teplitsky, Schuster; partial dissent: Rogers — 13 pages. (39)

Culminating incident alleged — "horseplay" during break combined with poor record — union and employer agreeing to substitute suspension but not ratified by membership; suspension settlement upheld. *Re Ferranti-Packard Transformers Ltd. and United Electrical, Radio and Machine Workers of America, Local 525; Gleiser grievance*, February 25, 1982. Jolliffe — 18 pages. (40)†

Drinking while at work — alcohol abusers entitled to treatment and a second chance; grievances allowed in part. *Re Brewers' Warehousing Company Ltd. and United Brewers' Warehousing Workers; individual grievances*, February 25, 1982. R.J. Roberts — 14 pages. (41)

Failure to report to work — unsubstantiated allegations of abandonment of job and poor work performance; two-week suspension substituted. *Re Toronto, Municipality of Metropolitan, and Metropolitan Toronto Civic Employees Union, Local 43; Cardle grievance*, March 9, 1982. Majority: Saltman, Tate; dissent to follow; Beresford — 14 pages. (42)

Falsification of medical record filed with employment application — back problem not disclosed — heavy work required; grievance dismissed. *Re Spruce Falls Power and Paper Company Ltd. and Lumber and Sawmill Workers' Union, Local 2995; Roussel grievance*, March 20, 1982. Majority: Dunn, Ronson; dissent: Bosnich — 7 pages. (43)

Illegal strike — grievor received harsher discipline because union president played no different role than other executive members; fifteen-day suspension substituted. *Re Sudbury General Hospital of the Immaculate Heart of Mary and Canadian Union of Public Employees, Local 1023; McNamara grievance*, March 25, 1982. Majority: Brent, Switzman; dissent in part: Gretton — 22 pages. (44)

Insubordination — blatant refusal without justification of appropriate and clear order from supervisor; grievance dismissed. *Re Amoco Fabrics Ltd. and International Woodworkers of America; Laniel grievance*, February 27, 1982. Majority: Ellis, Paulin; dissent: Smiley — 5 pages. (45)

Insubordination — refused to work overtime — overtime not illegal; grievance dismissed. *Re Robert Hunt Corporation and United Brotherhood of Carpenters and Joiners of America, Local 3054; Butt grievance*, January 22, 1982. Majority: Rayner, Noonan; dissent: Manson — 19 pages. (46)\*

Irresponsible conduct including absence without notice; record of behaviour prejudicial to harmony in work environment — rehabilitative efforts by employer and union unsuccessful; grievance dismissed. *Re Eaton Yale Ltd. Suspension Division and United Automobile Workers, Local 251; Westenfelt grievance*, March 9, 1982. Jolliffe — 26 pages. (47)

Loss of seniority; grievor failed to return to work after sick leave expired but provided medical certificate — reinstatement with compensation. *Re Heron Cable Industries Ltd. and United Automobile Workers of America; Kurzynski grievance*, February 25, 1982. Palmer — 6 pages. (48)

Lunch break overstayed — poor disciplinary record; grievances dismissed. *Re Quaker Oats Company of Canada Ltd. and United Food and Commercial Workers' Union, Local 293-1; McBride and Rea grievances*, March 23, 1982. Hearn — 12 pages. (49)†

Mistreatment of children alleged — burden of proof not met except for admitted incident — minor indiscretion compared with clear records; suspensions substituted. *Re Plainfield Children's Home and Service Employees International Union, Local 183; Palmer, Cassidy grievances*, March 25, 182. P. Picher, Laing, Lewis — 47 pages. (50)

Non-renewal of appointment — differences in standards not themselves procedural unfairness — no bias or pre-disposition; grievance dismissed. *Re Queen's University and John Carbonell*; February 26, 1982. M. Picher — 49 pages. (51)

Poor work performance alleged — not substantiated; grievance allowed; reinstatement with compensation. *Re Falconbridge Nickel Mines Ltd. and Sudbury Mine, Mill and Smelter Workers' Union, Local 598; Corriveau grievance*, February 26, 1982. Majority: P. Picher, Richards; dissent: Churchill-Smith — 68 pages. (52)\*

Possession of alcoholic beverages — drinking and supplying alcoholic beverages to other employees while on company property; grievance denied. *Re Chrysler Canada Ltd. and United Automobile Workers of America, Local 1285; Narayan grievance*, March 26, 1982. Black — 10 pages. (53)

Possession of company product outside normal area — wrongful intent; grievance dismissed. *Re A.R. Clarke and Company Ltd. and Ontario Council of Leather Workers and United Food and Commercial Workers International Union, Local 0125L; Bashir grievance*, March 1, 1982. Majority: O'Shea, Earle; dissent: Reilly — 16 pages. (54)

Quite alleged — mental disability not severe enough to render resignation involuntary — no coercion; grievance dismissed. *Re Toronto Star Limited and Toronto Newspaper Guild, Local 87; Weldon grievance*, March 3, 1982.

Majority: Brunner, Earle; dissent: Tate — 37 pages. (55)

Quit alleged — no evidence to support allegations of discharge or harassment forcing resignation; grievance dismissed. *Re Niagara Falls Union Centre and Teamsters Local 2175; Nevin grievance*, March 22, 1982. Rayner — 15 pages. (56)

Seniority broken as result of absence without permission — not causing termination of employment; reinstatement without compensation. *Re Collingwood Shipyards, Division of Canadian Shipbuilding and Engineering, and United Steelworkers of America, Local 6320; Hewitt grievance*, March 4, 1982. Carter — 9 pages. (57)\*†

Unauthorized absence — provision for stripping seniority does not bring about termination; reinstatement without compensation. *Re Collingwood Shipyards, Division of Canadian Shipbuilding and Engineering, and United Steelworkers of America, Local 6320; Shaw grievance*, March 30, 1982. Boscariol — 10 pages. (58)†

Work performance unsatisfactory — personal problems — grievor presently incompetent; grievance dismissed. *Re E.B. Eddy Forest Products Ltd. and Canadian Paperworkers Union, Local 34; Arnould grievance*, March 8, 1982. O'Shea, Alsen, Quaife — 12 pages. (59)

**Discipline**

Absence due to illness — grievor not ill on second day — prior illness preventing required twelve hours notice of return to work; grievance allowed. *Re St. Mary's Hospital (Sisters of St. Joseph) and London and District Service Workers' Union, Local 220; Borshell grievance*, March 10, 1982.

Majority: Palmer, Robbins; dissent: Mustard — 10 pages. (60)

Absence of month to attend overseas funeral — failure to request leave — misapprehension of facts by employer; warning substituted for suspension. *Re Dover Corporation (Canada) Ltd. and International Association of Machinists and Aerospace Workers, Lodge 78; Chau grievance*, December 15, 1981. Majority: Teplitsky, Lewis; dissent: Bernardo — 10 pages. (61)

Absenteeism — written warning too severe in circumstances; grievance allowed. *Re White Farm Equipment Canada Ltd. and United Automobile Workers of America, Local 458; Dumoulin grievance*, February 27, 1982. Shime — 6 pages. (62)

Assault upon patient by grievor alleged — not substantiated upon evidence; grievance allowed. *Re Kirkland and District Hospital and Service Employees Union, Local 478; Snowdon grievance*, March 25, 1982. P. Picher — 17 pages. (63)

Failure to call in — written warning reasonable; grievance dismissed. *Re C.I.L. Paints Inc. and United Steelworkers of America, Local 13328; Whyte grievance*, February 26, 1982. Majority: H.D. Brown, Bertuzzi; did not concur: Barko — 10 pages. (64)

"Horseplay" during break combined with record of poor work and absenteeism — grievor having irresponsible and careless attitude; suspension settlement upheld. *Re Ferranti-Packard Transformers Ltd. and United Electrical, Radio and Machine Workers of America, Local 525; Gleiser grievance*. See (40), *supra*. (65)†

Insubordination — clear direction ignored; grievance dismissed. *Re Robertson Building Systems Ltd. and Shopmen's Local 734, International Association of Bridge, Structural and Ornamental Iron Workers; Yeaman grievance*, February 26, 1982. Majority: Kennedy, Reistetter; dissent: Bosnich — 8 pages. (66)

Insubordination — misunderstanding; suspension reduced to one day. *Re Burns Meats Ltd. and United Food and Commercial Workers International Union; Keyes grievance*, March 9, 1982. Majority: R.J. Roberts, Switzman; dissent in part: Switzman; dissent: Sanderson — 12 pages. (67)

Insubordination — obscene and abusive language directed at supervisor; grievance dismissed. *Re Inco Metals Company, Unit of Inco Limited, and United Steelworkers of America; Mulroy grievance*, March 10, 1982. Majority: O'Shea, Simpson; dissent: McVey — 24 pages. (68)

Insubordination — refusal and insolent remarks — provoked by supervisor in part; three-day suspension reduced by one day. *Re The Globe and Mail and Southern Ontario Newspaper Guild, Local 87; Mihaluk grievance*, March 1, 1982. Majority: Saltman, Tate; partial dissent: Tate; dissent: Wickie — 16 pages. (69)

Insubordination — argument with supervisor after order — no prior discipline and good work record; warning substituted. *Re Monarch Plastics Limited and United Steelworkers of America, Local 14873; Biring grievance*, March 22, 1982. Brent, Etchen, Teal — 3 pages. (70)

Insubordination — refusal of order to remove jewellery — safety requirements not applicable to employees not working with machinery; grievances allowed. *Re S.A. Armstrong Ltd., Canada, and United Steelworkers of America, Local 6917; Sward, Moore and Young grievances*, March 15, 1982. Rubenstein — 10 pages. (71)

Insubordination — insulting language to foreman — suspension reasonable; grievance denied. *Re Certified Automotive Products (Central) Ltd. and United Steelworkers of America, Local 14831; Shipkula grievance*, March 1, 1982. Hinnegan — 6 pages. (72)

Lunch break overstayed — no progressive discipline imposed; reduced to three-day suspension. *Re Quaker Oats Company of Canada Ltd. and United Food and Commercial Workers Union, Local 293-1; McBride and Rea grievances*. See (49), *supra*. (73)†

One-day suspension also resulting in loss of overtime shift — penalty excessive; grievor to receive amount equivalent to amount he would have earned by working overtime. *Re Canadian International Paper Company, Container Division, and Canadian Paperworkers Union, Local 343; Wise grievance*, March 4, 1982. Burkett — 13 pages. (74)

Safety violation resulting in seven-day suspension — grievor not aware that breach would result in suspension; written warning substituted. *Re Provost Industrial Tankers Ltd. and Christian Labour Association of Canada; Mitchell grievance*, March 24, 1982. Black — 14 pages. (75)†

"Sick-in" alleged — only two grievors meeting onus of showing illness; two grievances allowed, four dismissed. *Re Richards-Wilcox of Canada Ltd. and International Association of Machinists and Aerospace Workers, Local 756; Leblanc et al grievances*, March 24, 1982. Rayner — 15 pages. (76)

Unauthorized absence resulting in three-day suspension — extreme heat — confusion over change in practice; reduction to one-day suspension. *Re Clare Brothers Limited, Cambridge, and International Molders and Allied Workers, Local 194; group grievance*, March 1, 1982. R.J. Roberts — 15 pages. (77)

Unauthorized presence on company property and lateness alleged — behaviour condoned in past; punishment of grievor discriminatory; suspension reduced. *Re The National Arts Centre Corporation and Public Service Alliance of Canada; Mulvihill grievance*, March 25, 1982. O'Shea — 28 pages. (78)

Warning letter to set standard of attendance — only putting employee on notice to improve and not disciplinary; grievance dismissed. *Re Falconbridge Nickel Mines Ltd. and Sudbury Mine, Mill and Smelter Workers' Union, Local 598; Rabin grievance*, March 25, 1982. Majority: Saltman, Valin; dissent: O'Neil — 14 pages. (79)\*

Work performance unsatisfactory — previous disciplinary record considered; grievance dismissed. *Re Koch Transport Ltd. and Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America, Local 73; McLennan grievance*, February 26, 1982. Majority: H.D. Brown, Boehmer; dissent: Turner — 17 pages. (80)

Work performance — previous incidents that did not draw discipline — limited weight to be given such incidents; suspension reduced. *Re Air Canada and Canadian Air Line Employees' Association; Hogue grievance*, November 5, 1981. Shime — 20 pages. (81)\*

**Grievance Procedure**

Alteration of grievance; union seeking to change claim for life insurance benefits to grievance of unjust discharge — union initially unaware that deceased was discharged before death; change allowed. *Re Collingwood, Corporation of Town of, and Canadian Union of Public Employees, Local 1217; union grievance re McSorley (deceased)*. See (21), *supra*. (82)†

Timeliness — grievance filed much later than mandatory period in collective agreement — no waiver by employer; grievance dismissed. *Re St. Clair College of Applied Arts and Technology and Ontario Public Service Employees Union; Murray grievance*, March 8, 1982. Majority: O'Shea, Hallsworth, Traves; addendum: Traves — 17 pages. (83)

Timeliness — grievor ignoring advice of union; extension of time limit inappropriate. *Re Northumberland and Newcastle Board of Education and Health, Office and Professional Employees, Local 1976; Jeffries grievance*, February 18, 1982. Willes — 9 pages. (84)†

Transcript of hearing requested — cost and time factors militating against practice in labour arbitrations — request not made within reasonable time and no great factual differences; union request denied. *Re Direct Winters Transport Ltd. and Teamsters, Local 938; Ranco grievance*, January 28, 1982. Palmer, Dinsdale, Petryshen — 13 pages. (85)

**Holidays**

Part-time nurses entitled to same holidays as full-time nurses; grievance allowed. *Re Chelsey Park Nursing Home and Ontario Nurses' Association; McAuliffe grievance*, January 11, 1982. Majority: Ellis, Gordon; dissent: Bernado — 9 pages. (86)\*

**Hours of Work**

Employee voluntarily attended training programme on Remembrance Day — voluntary attendance at training programme not work; grievance dismissed. *Re Bata Engineering, Division of Bata Industries Ltd., and International Association of Machinists and Aerospace Workers, Local 1788; Dutrisac grievance*, March 19, 1982. McCaughey — 12 pages. (87)†

**Interpretation**

Ambiguity both patent and latent — "office staff" — evidence of past practice admissible. *Re Genstar Stone Products Inc. and United Cement, Lime and Gypsum Workers International Union, Local 494; policy grievance*. See (5), *supra*. (88)

**Job Evaluation**

Alteration of machine — significant change in function; wages paid suitable to difficulty of tasks; grievance dismissed. *Re Dow Chemical of Canada Inc. and Printing Specialties and Paper Products Union, Local 466; union grievance*, March 1, 1982. Majority: Carter, Morley; partial dissent: Tate — 10 pages. (89)

**Job Posting**

Company filling vacancy without job posting — not temporary appointment; grievance allowed. *Re MacMillan Bloedel Packaging, Rexdale Container Division, and Canadian Paperworkers' Union, Local 1497; Whitehurst grievance*, March 1, 1982. Majority: Weatherill, Weisbach; dissent: Winkler — 8 pages. (90)

**Job Vacancy**

Existence of vacancy — job filled by employee exercising bumping rights; grievance dismissed. *Re Elgin County Board of Education and Canadian Union of Public Employees; union policy grievance*, March 20, 1982. Houston — 6 pages. (91)†

Existence of vacancy where reorganization of work — work still in existence; grievance allowed. *Re Labelle Bus Lines Ltd. and Canadian Union of Public Employees, Local 2387; union grievance*, March 12, 1982. Duschesneau-McLachlan — 8 pages. (92)†

**Lay-off**

Bumping rights — employee obliged to accept available work, given ability and qualifications; grievance dismissed. *Re Silknit Limited and United Textile Workers of America, Local 354; Garant grievance*, March 22, 1982. Majority: Brent, Irwin; dissent: Bosnich — 7 pages. (93)

Bumping rights — incentive operation temporarily shut down — senior employee not entitled to bump immediately; grievances dismissed. *Re Welland Forge Ltd. and United Electrical, Radio and Machine Workers of America; Smith and Coles grievances*, January 25, 1982. Majority: Teplitsky, MacDermid; dissent: Bosnich — 6 pages. (94)

Bumping rights — senior employee entitled to job in same classification in higher volume store; not "bumping up"; grievance allowed. *Re Dominion Stores Ltd. and United Steelworkers of America, Local 14974; Solima grievance*, March, 1982. Welling — 8 pages. (95)

Departmental seniority — union failing to establish requisite degree of probability that job in question belonging to another department; grievance denied. *Re Premier Group, Windsor, (Division of Lake Ontario Cement Ltd.) and Teamsters Local 880; Laframboise grievance*, March 19, 1982. R.J. Roberts — 6 pages. (96)†

Insufficient notice — to be remedied by work assigned on rotational basis. *Re Collingwood Shipyards and United Steelworkers of America, Local 6230; union grievance*, March, 1982. Teplitsky — 8 pages. (97)

Junior employees kept until regular shift completed — past practice of rescheduling shifts; grievances dismissed. *Re Simcoe, Corporation of County of, and Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers, Local 304; Bates and Money grievances*, February 25, 1982. Houston — 9 pages. (98)

Plant-wide seniority applicable to recall — grievor possessing seniority and ability; grievance allowed. *Re Sunbeam Corporation (Canada) Ltd. and United Electrical, Radio and Machine Workers of America, Local 566; Cutler grievance*, March 19, 1982. Rubenstein — 6 pages. (99)†

**Lock-out**

Plant closing for inventory — not a lock-out; grievance dismissed. *Re Engelhard Industries of Canada Ltd. and Energy and Chemical Workers' Union, Local 45; policy grievance*, January 15, 1982. Palmer — 10 pages. (100)

**Management Rights**

Alteration of conditions of employment; imposition of requirement to provide car — rule must be reasonable and consistent with other terms of agreement; hearing adjourned. *Re Peterborough, City of, and Peterborough Professional Fire Fighters Association, Local 519 of International Association of Fire Fighters; union grievance*, March 5, 1982. Carter — 9 pages. (101)

Elimination of provision of living quarters — removal of privilege only; no lockout; no estoppel; grievances denied. *Re Olav Haavaldsrud Timber Company Ltd. and Lumber and Sawmill Workers' Union, Local 2995; Ouellette grievance, policy grievance*, March 4, 1982. Majority: Barton, Bernardi; dissent: Fyshe — 18 pages. (102)

**Overtime**

Distribution — company did not make every reasonable attempt to contact employee; grievance allowed. *Re United Tire and Rubber Company Ltd. and United Rubber, Cork, Linoleum and Plastic Workers of America, Local 973; Ryan grievance*, March 10, 1982. Howe — 18 pages. (103)

Distribution — day shift entitled to night shift overtime; grievances dismissed. *Re Collingwood Shipyards, Division of Canadian Shipbuilding and Engineering, and United Steelworkers of America, Local 6320; Hockham and McTaggart grievances*, March 4, 1982. Carter — 8 pages. (104)

Distribution — part of work falling within grievor's classification; failure to divide shift between two classifications; grievance allowed. *Re Genstar Stone Products Inc. and United Cement, Lime and Gypsum Workers International Union, Local 494; Toomer grievance*, March 10, 1982. Majority: Brunner, Nokes; dissent: Cosburn — 12 pages. (105)

Regular shift following call-back shift — overtime not payable for regular shift; grievance dismissed. *Re St. Joseph's General Hospital, Elliot Lake, and Ontario Nurses' Association; Rheaume grievance*, March 18, 1982. Majority: Brent, Ronson; dissent: Mayne — 11 pages. (106)\*

Special shift cycle — no requirement to work preceding regular time to be entitled to overtime; grievance allowed. *Re Denison Mines Ltd. and United Steelworkers of America, Local 5815; Simard grievance*, March 19, 1982. Adams — 11 pages. (107)

**Probationary Employees**

Arbitrability of discharge — exclusion from grievance procedure void. *Re Falconbridge Nickel Mines Ltd. and Sudbury Mine, Mill and Smelter Workers' Union, Local 598; Corriveau grievance*. See (52), *supra*. (108)\*

**Procedure**

Order of evidence — dispute over whether grievor resigned or was discharged; union alleging harassment and having obligation to lead evidence to establish *prima facie* case. *Re Niagara Falls Union Centre and Teamsters Local 2175; Nevin grievance*. See (56), *supra*. (109)

**Progression**

Qualifications — training period mandatory by terms of collective agreement; individual assessment of requisite skills not required; grievance dismissed. *Re Ontario Hydro and Richard L. Hearn TGS Unit of Canadian Union of Operating Engineers and General Workers; Girdauskas grievance*, March 8, 1982. Majority: H.D. Brown, Hayter; dissent: Carlisli — 21 pages. (110)

**Promotion**

Appropriate remedy where breach of seniority provision. *Re Waterloo, Regional Municipality of, and Canadian Union of Public Employees, Local 1656; Dietrich grievance*, March 12, 1982. Adamson — 2 pages. (111)†

Prior commitment to consider grievor for next opening — employer complying — failure would not be breach of collective agreement anyway; grievance dismissed. *Re Pioneer Chain Saw Corporation Inc. and United Steelworkers of America; Arseneault grievance*, February 25, 1982. Palmer — 4 pages. (112)

Procedure — review board acted in reasonable manner and within provisions of collective agreement; grievance denied. *Re Toronto, Corporation of City of, and Canadian Union of Public Employees, Local 79; Hall grievance*, March 29, 1982. Brent — 10 pages. (113)

Psychological test for screening applicants — not a fair evaluation of fitness for job; grievors to proceed to next stage of promotional process. *Re Metropolitan Toronto Licensing Commission and Canadian Union of Public Employees, Local 79; group grievance*, March 25, 1982. Samuels — 75 pages. (114)†

Qualifications — bad faith allegation not made out; grievance dismissed. *Re Ottawa Board of Education and Ottawa Board of Education Employees' Association; Drouin grievance*, March 4, 1982. Majority: Adell, Chodos; dissent: O'Brien — 24 pages. (115)

Qualifications — grievor having less knowledge, efficiency and ability than incumbent; grievance dismissed. *Re P.L. Robertson Manufacturing Division of Procor Ltd. and United Steelworkers of America, Local 4970; Dennis grievance*, March 1, 1982. Brent, Boehmer, Teal — 8 pages. (116)

Qualifications — grievor not specially trained for position; grievance dismissed. *Re Canadian National Railway Company, Telecommunications Division, and Canadian Telecommunications Division of Canadian Brotherhood of Railway, Transport and General Workers; Jankowski grievance*, February 8, 1982. Majority: Beck, Milley; did not concur: Beaulieu; addendum: Beck — 9 pages. (117)

Qualifications — grievor senior applicant but less qualified; grievances dismissed. *Re Indalex Division of Indal Limited and United Steelworkers of America, Local 2729; Onorato grievances*, March 3, 1982. Samuels — 8 pages. (118)

Qualifications — grievor unqualified; grievance dismissed. *Re Honeywell Limited and United Automobile Workers of America, Local 80; Sambourne grievance*, March 8, 1982. Majority: O'Shea, White; dissent: Bruce — 13 pages. (119)

Qualifications — junior employees more skilled, procedural requirements met; grievance dismissed. *Re Canadian General Electric Company Ltd. and International Union of Electrical, Radio and Machine Workers; Kimball grievance*, February 8, 1982. Majority: Beck, O'Toole; did not concur: Goodman — 26 pages. (120)

Qualifications — junior employee performing better in interview; grievance dismissed. *Re Toronto Public Library Board and Canadian Union of Public Employees, Local 1996; Patel grievance*, February 25, 1982. Kennedy, White, Noonan — 12 pages. (121)

#### Sick Pay

Absence on second day — illness of first day preventing grievor from giving required advance notice of return to work; grievance allowed. *Re St. Mary's Hospital (Sisters of St. Joseph) and London and District Service Workers' Union, Local 220; Borshell grievance*. See (60), *supra*. (122)

Lay-off — no entitlement to sick leave credits — grievance dismissed. *Re Aylmer Foods Warehousing Ltd. and Teamsters Union, Local 419; group grievance*, March 2, 1982. Burkett, Simpson, Stewart — 8 pages. (123)

Plan not incorporated in collective agreement — time limits in plan not binding; grievance allowed. *Re Certified Automotive Products (Central) Ltd. and United Steelworkers of America, Local 14831; Gomez grievance*, March 15, 1982. Shime — 7 pages. (124)

#### Wages

Cancellation of shift due to snowstorm — no entitlement to wages; grievance dismissed. *Re RCA Inc., Midland, and United Electrical, Radio and Machine Workers of America, Local 568; union grievance*, March 8, 1982. Sheppard — 11 pages. (125)†

Cost of living allowance; payments triggered in one year not to be continued for subsequent year — payments to resume only when triggered by section governing new year; grievance dismissed. *Re Direct Winters Transport Ltd. and Teamsters Union, Local 938; Ranco grievance*. See (85), *supra*. (126)

Incentive pay — earned hour standards changed — reasonable cause; grievance dismissed. *Re Cooper Tool Group Ltd. and United Steelworkers of America, Local 6497; group grievance*, March 1, 1982. Hinnegan — 7 pages. (127)

Placement on salary grid — previous experience with other employer — not arbitrable; grievance dismissed. *Re Elisabeth Bruyere Health Centre and Ontario Public Service Employees' Union, Rondeau grievance*, March 2, 1982. Saltman, Baldwin, Beaulieu — 2 pages. (128)

#### The Hospital Labour Disputes Arbitration Act

The following interest arbitration awards under *The Hospital Labour Disputes Arbitration Act* were filed with the Office of Arbitration during the month of March, 1982.

*Collingwood General and Marine Hospital and S.E.I.U., Local 204 (office and clerical)*. Saltman, Cancilla, Lewis; addendum: Lewis — 11 pages.

*Extendicare (Canada) Limited; Bestview Holdings Limited; Central Park Lodges of Canada; and O.N.A.* Majority: Swan, McIntyre; dissent: Perkins; addendum: McIntyre — 65 pages.

*Little's Nursing Home (Tecumseh) Limited and O.N.A.* Majority: Teplitsky, McIntyre; dissent: Dumouchelle — 11 pages.

*Newmarket Extended Care and Convalescent Centre and C.U.P.E., Local 2040*. Baum, Graham, Robbins; addenda: Graham, Robbins — 27 pages.

*Participating Hospitals (12) and London and District Service Workers' Union, Local 220, (part-time), (interim award)*. Saltman, Sargeant, Robbins — 4 pages.

*Participating Hospitals (Central Issues) and O.N.A.* (supplementary award). Majority: O'Shea, Paliare; dissent: Winkler — 35 pages.

*Participating Hospitals (38) and O.P.S.E.U. (technologists)*. Majority: Verity, Lewis; dissent: Sargeant; addendum: Lewis — 69 pages.

*Participating Nursing Homes (10) and London and District Service Workers' Union, Local 220*. V.E. Scott, Perkins, Switzman; addendum: Perkins; addendum to follow: Switzman — 38 pages.

*Stormont, Dundas and Glengarry, United Counties of, (Glen-Stor-Dun Lodge) and C.U.P.E., Local 1792*, (supplementary award). Ord, Wilson, Walsh — 44 pages.

*Sunnycrest Nursing Home (Whitby) and C.U.P.E., Local 132*. Baum, Valin, Robbins — 23 pages.

*Toronto Hospitals (Baycrest Hospital and/or Jewish Home for the Aged, Mount Sinai Hospital, Sunnybrook Hospital, Toronto East General and Orthopaedic Hospital, Inc., and Wellesley Hospital) and S.E.U., Local 204*, (supplementary report by consultant to board). Tirrell — 212 pages.

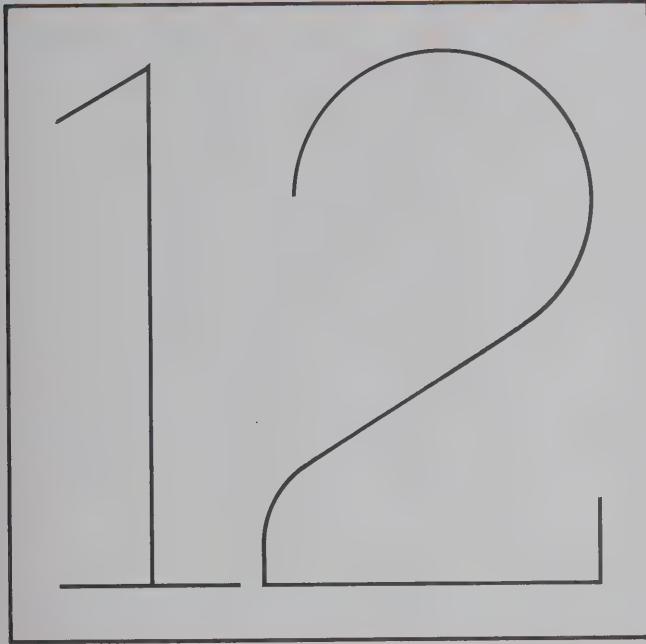
*Versa-Care Centres of Ontario Limited and Versa-Care Limited and Christian Labour Association of Canada*. Majority: V.E. Scott, Rhinelander; dissent: VanderLaan; addendum to follow: Rhinelander — 15 pages.

*Waterloo, Regional Municipality of, (Sunnyside Home) and London and District Service Workers Union, Local 220, (full-time)*. Waisglass, Boehmer, Switzman; addenda: Boehmer, Switzman — 10 pages.

*Waterloo, Regional Municipality of (Sunnyside Home) and London and District Service Workers Union, Local 220, (part-time)*. Waisglass, Boehmer, Beaulieu; addendum: Boehmer — 5 pages.

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# Monthly Bulletin



Ontario Ministry of Labour



Hon. Russell H. Ramsay, Minister  
T.E. Armstrong, QC, Deputy Minister

Office of Arbitration  
400 University Avenue, 6th Floor  
Toronto, Ontario  
M7A 1T7  
Tel. (416) 965-5669

Miss Jean M. Read, Director

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Office of Arbitration as a service to  
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## Purchase of Awards

Due to increasing demand for the supply of awards, immediate service can no longer be guaranteed. For quantities in excess of twenty pages, lead time of forty-eight hours should be allowed. Also, copies of awards dated prior to 1976, which must be retrieved from storage, cannot be supplied in less than one week.

All awards listed in the *Monthly Bulletin* may be reviewed at the Office of Arbitration, 400 University Avenue, 6th Floor, Toronto, Ontario, M7A 1T7. Copies may be purchased for a fee of 50¢ per page and orders will be filled upon receipt of a request and a cheque or money order payable to the Treasurer of Ontario, for the applicable amount.

## Appointment of Arbitrators

Forms for requests for appointment of arbitrator under section 45 of *The Labour Relations Act* are available on request, from the Office of Arbitration.

## Grievance Arbitration

The following awards were filed with the Office of Arbitration during the month of April, 1982. The summary was prepared under the supervision of G.C. Simmons, B.A., B.C.L., LL.M.; D.D. Carter, B.A., B.C.L., LL.B. and K.P. Swan, P.Eng., LL.B.

\* Indicates award to be reported in full or in part in *Labour Arbitration Cases*.

† Indicates award issued under section 45 of *The Labour Relations Act*.

## Arbitrability

Discharge: just cause provision absent — jurisdiction to review only to extent employer curtailed by sick benefits provisions; grievance dismissed. *Re Ontario Banknote Ltd. and Toronto Typographical Union No. 91; Ladouceur grievance*, April 22, 1982. Baum — 15 pages. (1)†

Timeliness under s. 45 — case of discharge rather than loss of seniority and therefore out of time; grievance dismissed. *Re Lewis Paper Wholesale Ltd. and Service Employees Union, Local 204; Rhooms grievance*, April 2, 1982. Barton — 7 pages. (2)†

**Bargaining Unit**

"Technical co-ordinator" — conflict of interest test not applicable — no real authority over employees or management; grievance allowed. *Re Horton C.B.I., Limited, and United Steelworkers of America, Local 8473; union grievance*, March 23, 1982. Majority: Adell, Sharp; dissent: McGowan — 23 pages. (3)\*

**Classification**

Improper classification — grievor entitled to reclassification; grievance allowed. *Re Ontario Public Service Employees Union and Ontario Public Service Staff Union; Roach grievance*, April 20, 1982. Arthurs — 12 pages. (4)

New classification alleged — substantial overlap with former position and no substantial qualitative changes; grievance allowed. *Re St. Joseph's Hospital and London and District Service Workers' Union, Local 220; union grievance*. March 16, 1982. Majority: Rose, Robbins; dissent: Mustard — 20 pages. (5)\*

**Collective Agreement**

Letter attached to agreement: not intended to form part of agreement — failure of parties to sign, index and update; claim for early vacation pay dismissed. *Re General Motors of Canada Limited and Canadian Union of Operating Engineers and General Workers, Local 101; Gray grievance*, April 23, 1982. Rose — 9 pages. (6)†

**Contracting Out**

Janitorial services — specific provision for right to contract out; grievance dismissed. *Re Hobart Brothers of Canada Limited and International Molders and Allied Workers Union, Local 246; policy grievance*, March 30, 1982. McLaren — 11 pages. (7)

**Damages**

Suspension without pay substituted for discharge — encompasses all types of pay including vacation pay; grievance denied. *Re Lake Ontario Cement Limited and United Cement, Lime and Gypsum Workers International Union, Local 387; Breckenridge grievance*, April 16, 1982. Majority: Brunner, Morley; dissent: Nokes — 4 pages. (8)

**Demotion**

Confirmation in new position denied after trial period: grievor failing to prove that action disciplinary — employer not required to show just cause; grievance dismissed. *Re Royal Ontario Museum and Ontario Public Service Employees Union; Jong grievance*, April 5, 1982. Brent, Davies, Robbins; addendum: Robbins — 11 pages. (9)\*

**Discharge**

Absenteeism — failure to warn grievor; grievance allowed. *Re University Hospital, London, and London and District Service Workers' Union, Local 220; Robinson grievance*, April 14, 1982. Verity, White, Robbins — 9 pages. (10)

Absenteeism: record of excessive absenteeism and lateness — sufficient medical evidence to rebut presumption that grievor could not give regular attendance in future; grievance allowed. *Re Standard Tube Canada Limited and United Automobile Workers of America, Local 636; Moore grievance*, April 5, 1982. H.D. Brown — 13 pages. (11)

Absenteeism: repeated absences caused by attitudinal and motivational difficulties rather than illness — possible incompatibility between "innocent absenteeism" dismissal powers and disability benefits provisions not arising on facts; grievance dismissed. *Re Toronto Star Newspapers Ltd. and Southern Ontario Newspaper Guild; Cheeseman grievance*, February 1982. Prichard — 27 pages. (12)

Abuse of sick leave alleged — not substantiated; grievance allowed. *Re Certified Brakes, A Lear Siegler Company, and United Steelworkers of America, Local 14832; Leonard grievance*, March 29, 1982. O'Shea — 17 pages. (13)

Alcoholism — employer made extensive rehabilitation efforts; grievor likely unemployable; reinstatement without compensation. *Re St. Catharines General Hospital and Service Employees Union, Local 204; Cesar grievance*, April 21, 1982. O'Connor — 5 pages. (14)†

Altercation with employees of outside contractor — prior work record not justifying discharge; grievance allowed. *Re Kingsway Transports Limited and Teamsters Union, Local 938; Smith grievance*, April 14, 1982. Majority: Burkett, Petryshen; dissent: Mosey — 21 pages. (15)\*

Assault on foreman — no significant mitigating circumstances; grievance denied. *Re Loc-Pipe Division of Lake Ontario Industries, Division of Hucrete, and International Molders' and Allied Workers' Union, Local 28; Wilson grievance*, April 14, 1982. Hinnegan — 6 pages. (16)

Breach of company policy and statutory obligations of company — substitution of incongruous audio portion to video broadcast; grievances dismissed. *Re Ottawa-Cornwall Broadcasting Limited CJOH-TV and National Association of Broadcast Employees and Technicians; Glasgow and Carroll grievances*, April 5, 1982. Kennedy — 13 pages. (17)

Breach of requirement to wear safety glasses — physical discomfort caused by medical problem; reinstatement without compensation. *Re Inco Metals Company and United Steelworkers of America, Local 6500; Evans grievance*, April 1, 1982. Majority: Gorsky, Nash; dissent: McVey — 7 pages. (18)

Culminating incident — insubordination — penalty too severe; two-week suspension to replace discharge. *Re Canadian Salt Company Limited and United Automobile Workers, Local 195; Murray grievance*, April 27, 1982. Brent — 17 pages. (19)

Dishonesty: grievor claiming more than actual production — grievance dismissed. *Re Spalding Canada and International Woodworkers of America; Clark grievance*, April 5, 1982. Majority: Springate, Joyce; dissent: Ballantyne — 23 pages. (20)

Drug use: rules generally ignored and not enforced by management — grievor young and inexperienced but with short service; reinstatement without compensation. *Re Dunlop Plastics Canada Limited and United Rubber, Cork, Linoleum and Plastic Workers of America, Local 974; Wunderlich grievance*, April 2, 1982. Adamson, Collins, Walsh — 17 pages. (21)

Failure to return to work after leave of absence — leave granted on condition that return to work be on specified date or termination would result; grievance denied. *Re Leco Industries Limited and Energy and Chemical Workers Union, Local 819; Chaudri grievance*, April 1, 1982.

Teplitsky, More, Churchmuck — 4 pages. (22)

Falsification of information on application form — clear warning on form; grievance denied. *Re Lennox Industries (Canada) Ltd. and United Steelworkers of America, Local 7235; Manoer grievance*, April 7, 1982. Dempster — 14 pages. (23)

Fighting with fellow employee — grievor not entirely to blame; grievance allowed in part. *Re American Standard and International Brotherhood of Pottery and Allied Workers, Local 231; De Sousa grievance*, March 18, 1982. Majority: Beck, Armstrong; dissent: Healy — 6 pages. (24)

Inadvertent punching of two time cards — contrary to posted company rules — discharge excessive; one-day suspension substituted. *Re Irwin Toy Limited and United Steelworkers of America, Local 13571; George grievance*, March 31, 1982. Kennedy — 7 pages. (25)†

Intoxication upon reporting for work — very good record; conditional reinstatement without compensation. *Re Alcan Canada Products Limited and United Steelworkers of America, Local 343; Letourneau grievance*, April 7, 1982. Curtis — 19 pages. (26)

Prolonged absence caused by industrial accident — return date unknown — company action premature; reinstatement on conditions. *Re Square D Canada Electrical Equipment Inc., Port Colborne, and United Steelworkers of America, Local 9075; Hems grievance*, April 29, 1982. H.D. Brown, Binning, Davis — 14 pages. (27)

Qualifications: grievors failing to meet new government standards by deadline — regulation revoked before discharges; grievances allowed without objection. *Re Toronto, Municipality of Metropolitan, and Metropolitan Toronto Civic Employees Union, Local 43; Donnan, Greenwood grievances*, March 29, 1982. Little — 14 pages. (28)†

Serving liquor to a minor — customer not "apparently" under nineteen; grievance allowed. *Re Peel County Feed Co. Inc., Rexdale, and Hotel, Restaurant and Cafeteria Employees Union; Saini grievance*, March 30, 1982. Majority: Brunner, Tate; dissent: MacDermid — 14 pages. (29)

Termination upon completion of apprenticeship programme — no journeyman vacancy; grievance dismissed. *Re Pembroke Observer and Pembroke Typographical Union, No. 867; Sylvestre grievance*, April 15, 1982. Majority: O'Shea, Dinsdale; dissent: Collins — 16 pages. (30)

Theft discovered many years thereafter — clean record in intervening years; conditional reinstatement and loss of seniority since date of theft. *Re Canada Post Corporation and Letter Carriers' Union of Canada; Carson grievance*, March 17, 1982. von Veh — 16 pages. (31)

Warning not to drive without proof of licence not heeded — serious but first offence; suspension substituted. *Re Gravenhurst, Town of, and Ontario Public Service Employees Union; Appleton grievance*, April 17, 1982. Houston — 9 pages. (32)†

Work performance and attitude unsatisfactory — discharge excessive — ten-day suspension substituted; grievance allowed in part. *Re Hawker-Siddeley Canada Inc. (Orenda Division) and International Association of Machinists, Lodge 717; Cunneyworth grievance*, April 8, 1982. Prichard — 12 pages. (33)

Work performance unsatisfactory — continued pattern of ignoring company policy and instructions; discharge upheld. *Re Bell Canada and Communications Workers of Canada; McCurdy grievance*, April 22, 1982. Majority: P. Picher, Winkler; dissent in part: Robbins — 17 pages. (34)

### Discipline

Absence without leave for portion of safety seminar — voluntarily attended — penalty reduced from one-day suspension to loss of payment for attendance at seminar; grievances allowed in part. *Re Carborundum Canada Company Ltd. and United Steelworkers of America, Local 4151; Gazely, McCracken and Sawada grievances*, April 19, 1982. Gorsky, McKerral, Summers — 4 pages. (35)

Abuse of time periods set for lunch and coffee breaks — first offence on otherwise clear records; grievance allowed in part. *Re Canada Packers Inc. and United Food and Commercial Workers International Union; Rowe and Mogus grievance*, March 18, 1982. Beck — 14 pages. (36)†

Altercation with co-worker — inconsistent penalties; reduced to written warning. *Re Mount Sinai Hospital and Service Employees Union, Local 204; Lee grievance*, April 12, 1982. O'Connor — 5 pages. (37)†

Attempt to obtain money from a patient — patient's version of events accepted; grievance denied. *Re Mount Sinai Hospital and Service Employees Union, Local 204; Morrison grievance*, April 7, 1982. Majority: Kennedy, Boettcher; dissent: Marshall — 11 pages. (38)

Failure to inform employer of change of address; abuse of sick leave alleged — grievance allowed in part. *Re Etobicoke, Borough of, and Etobicoke Professional Fire Fighters Association, Local 1137; Singleton grievance*, March 29, 1982. Gorsky — 10 pages. (39)

Failure to report resulting in suspension — confusion about shift schedule, grievor not aware discipline would result; grievance allowed. *Re Sisters of St. Joseph for Diocese of Toronto in Upper Canada and International Union of Operating Engineers, Local 796; Goncalves grievance*, April 14, 1982. Devlin — 15 pages. (40)†

Illegal strike — penalty imposed on pickets too severe; four-day suspension reduced to two-day suspension. *Re Toronto Western Hospital and Canadian Union of Public Employees; Seegobin grievance*, April 27, 1982. Majority: O'Connor, Mayne; dissent: Wolfenden — 16 pages. (41)

Illegal strike: union officials — more severe discipline justified if active involvement by union official; one grievance dismissed and one grievance allowed in part.

*Re Port Hope and District Hospital and Canadian Union of Public Employees, Local 1653; Dorling and Abrams grievances*, April 27, 1982. Majority: Burkett, Mustard; dissent: Wrightman; addendum: Burkett — 19 pages. (42)

Insubordination — refusal to perform priority work in favour of low priority work with intent to embarrass supervisor — five-day suspension justifiable; grievance dismissed. *Re Globe and Mail, Division of F.P. Publications (Eastern) Limited, and Southern Ontario Newspaper Guild, Local 87; Mihaluk grievance*, April 21, 1982. Majority: Brunner, McCuaig; dissent: Tate — 12 pages. (43)

Insubordination: refusal to obey reasonable direction by supervisor — history of failing to get along with colleagues and supervisors, which is unacceptable; grievance denied.

*Re Canadian Broadcasting Corporation and National Association of Broadcast Employees and Technicians; Gardner grievance*, April 23, 1982. Adams — 22 pages. (44)

Insubordination — three-day suspension reduced to two days; grievance allowed in part. *Re Canadian Carborundum Company Ltd. and United Steelworkers of America, Local 4151; Kane grievance*, March 19, 1982. Gorsky, McKerral, Summers — 11 pages. (45)

Insubordination resulting in two-day suspension — good work record; reduced to suspension for balance of day of incident. *Re Kendall Canada and United Steelworkers of America, Local 8505; Breau grievance*, April 5, 1982. Brunner — 11 pages. (46)

Refusal of medical information: grievor refusing to submit employer's form on prospective return date to physician — employer's request unauthorized and unreasonable; grievance allowed. *Re Brewers' Warehousing Company Limited and United Brewers' Warehousing Workers Provincial Board, Local 311; Boloty grievance*, March 31, 1982. Knopf — 15 pages. (47)\*†

Refusal to work overtime — refusal of illegal assignment justified; grievance allowed in part. *Re Canadian Pacific Limited and Canadian Pacific Police Association; LeBlanc grievance*, March 31, 1982. O'Shea — 24 pages. (48)

### Expense Allowance

Tire allowance — letter of understanding stating that mileage for more than one car cannot be added together; grievance denied. *Re Canadian Labour Congress and Canadian Labour Congress Representatives' Union; Wright grievance*, March 27, 1982. Barton — 5 pages. (49)

### Grievance Procedure

Form of grievance — policy grievance allowed where no specific employee claim involved; objection denied.

*Re St. Joseph's Hospital and London and District Service Workers' Union, Local 220; policy grievance*, April 19, 1982. Majority: Betcherman, Beaulieu; addendum: Beaulieu; dissent: Coups — 13 pages. (50)

Timeliness: appointment of arbitrator under section 45(2) to be within time "permitted under the agreement" — includes extensions permitted under the agreement; objection denied. *Re Algoma Steel Corporation Limited and United Steelworkers of America, Local 2251; union grievance*, April 3, 1982. Bernstein — 11 pages. (51)†

Timeliness: express restriction of power to extend — arbitrator without jurisdiction to extend time limits; grievance considered abandoned. *Re Drummond McCall Inc. and Fuel, Bus, Limousine, Petroleum Drivers and Allied Employees Local Union 352; Silva grievance*, March 26, 1982. Houston — 13 pages. (52)†

### Hiring Hall

Refusal to employ — employer not required to hire employee unsuitable because of undisputed medical history; grievance dismissed. *Re Toronto, Board of Education for City of, and Toronto-Central Ontario Building and Construction Trades Council; Bober grievance*, March 30, 1982. Majority: H.D. Brown, Furlong; dissent: Tait — 12 pages. (53)

### Holidays

Scheduling — floating holidays to be within calendar year, not based on agreement year — to be on day other than statutory holiday or as agreed with union; one grievance allowed in part, other grievance denied. *Re Square D Canada Electrical Equipment Inc., Arnprior, and International Brotherhood of Electrical Workers, Local 1563; union grievances*, April 11, 1982. Duchesneau-McLachlan — 3 pages. (54)†

### Holiday Pay

Part-time employees entitled to payment of straight time plus premium payment proportioned according to hours worked on statutory holiday; grievance dismissed. *Re Toronto Star Newspapers Limited and Southern Ontario Newspaper Guild, Local 87; union grievance*, April 15, 1982. Majority: Burkett, Earle; dissent: Tate — 11 pages. (55)

Part-time nurses — may qualify for lieu day if any of eleven designated holidays worked; grievance allowed. *Re Scarborough Centenary Hospital Association and Ontario Nurses' Association; policy grievance*, April 8, 1982. Majority: Brent, McIntyre; dissent: Cancilla — 11 pages. (56)

Regular part-time nurse — "regular straight-time hourly wage" includes percentage in lieu of fringe benefits; grievance allowed. *Re North York General Hospital and Ontario Nurses' Association; Thornhill grievance*, April 7, 1982. Majority: Saltman, Paliare; dissent: MacDougall — 12 pages. (57)

### Illness

Fitness to return to work — grievor's medical condition made him unfit for available jobs; grievance dismissed. *Re Pullman Trailmobile Canada Limited and United Automobile Workers of America, Local 397; Walker grievance*, April 5, 1982. H.D. Brown — 17 pages. (58)\*

Request for additional medical evidence of fitness to return — reasonable in circumstances; grievance dismissed. *Re Chromasco Limited and United Steelworkers of America, Local 4632; McMaster grievance*, April 14, 1982. Hin negan — 7 pages. (59)

Trial period in new job which was to have been rehabilitative sought by grievor — employer in breach of collective agreement by refusing trial period; grievance allowed. *Re Ohio Brass Canada Inc. and Teamsters Local 1345, Joint Council 79 Canada Conference; Renda grievance*, April 15, 1982. McCulloch — 13 pages. (60)

#### Job Evaluation

Assessment of ratings assigned by employer — principle of relativity governs; grievance allowed in part, dismissed in part. *Re Toronto, Corporation of City of, and Canadian Union of Public Employees, Local 79; Gibson grievance*, April 5, 1982. Beatty — 20 pages. (61)

Consideration of various factors — grievance allowed in part. *Re Stanley Works Limited of Hamilton and United Steelworkers of America, Local 3692; union grievance*, April 21, 1982. Brent — 17 pages. (62)†

#### Job Posting

Failure to post secondary vacancy — no specific claims advanced and employer acting under honest misinterpretation; request for reopening of position denied — declaratory relief granted. *Re St. Joseph's Hospital and London and District Service Workers' Union, Local 220; policy grievance*. See (50), *supra*. (63)

Job description — "caretaking duties" include duties which a caretaker might perform; senior employee qualified; grievance dismissed. *Re Scarborough, Board of Education for Borough of, and Canadian Union of Public Employees, Local 149; Devine grievance*, April 13, 1982. Brent — 7 pages. (64)†

Secondary vacancy: occurring in department separate from that of original vacancy — obligation to post; declaratory relief granted. *Re St. Joseph's Hospital and London and District Service Workers' Union, Local 220; policy grievance*. See (50, 63), *supra*. (65)

#### Job Vacancy

Existence of vacancy: job duties assigned elsewhere — specific provision against erosion of classifications; grievance allowed. *Re Ottawa-Cornwall Broadcasting Ltd., CJOH-TV Ottawa, and National Association of Broadcast Employees and Technicians; policy grievance*, March 30, 1982.

Carter — 11 pages. (66)\*

#### Lay-off

Bumping — company having right to pay employees contractual rates for jobs they are presently performing; grievance denied. *Re Indalex, Division of Indal Limited, and United Steelworkers of America, Local 2729; group grievance*, April 8, 1982. Betcherman — 6 pages. (67)

Bumping rights — aspects of job requiring experience and training; grievance dismissed. *Re Brydon Division ITT Industries of Canada Ltd. and United Steelworkers of America, Local 3950; Saunders grievance*, April 26, 1982. Devlin — 15 pages. (68)†

Bumping rights — employer not entitled to prefer more qualified or versatile employee; grievance dismissed. *Re Lawson Packaging and Graphic Arts International Union, Local 211; Morihovitis grievance*, April 1, 1982. Devlin — 16 pages. (69)†

Bumping rights — senior employee able to do available work; grievance allowed. *Re Maple Leaf Mills and United Food and Commercial Workers International Union, Local P1105; Scott grievance*, April 16, 1982. Hin negan — 6 pages. (70)†

Bumping rights: timing — bumping rights not applicable until later date; grievance dismissed. *Re Wentworth County Board of Education and District 36, Ontario Secondary School Teachers' Federation; union grievance*, February 9, 1982. Majority: Beck, Brown; dissent: Murphy — 6 pages. (71)

Qualifications — ability to perform requirements without training or adaptation period; grievance allowed. *Re Timberjack Logging Equipment and International Molders and Allied Workers Union, Local 246; Fowler grievance*, March 24, 1982. Teplitsky — 5 pages. (72)

Qualifications — grievor, although senior, lacked experience and skill; grievance dismissed. *Re Clare Brothers Limited, Cambridge, and International Molders and Allied Workers Union, Local 194; Froklage grievance*, April 2, 1982. Brunner — 8 pages. (73)

Qualifications — grievor not equally qualified for work remaining; grievance dismissed. *Re ITT Cannon Electric Canada and United Automobile Workers of America, Local 1090; Boyd grievance*, March 18, 1982. Teplitsky — 4 pages. (74)

Qualifications — grievor not having required licence and unable to pass test without training; grievance dismissed. *Re T.I.W. Industries Ltd. and United Steelworkers of America; Pamplin grievance*, March 23, 1982. Teplitsky — 4 pages. (75)

Qualifications — grievor not possessing experience required for job to which she wished to bump; grievance denied. *Re ITT Cannon Electric Canada and United Automobile Workers of America, Local 1090; Palmer grievance*, March 18, 1982. Teplitsky — 4 pages. (76)

Qualifications — training needed; not relatively equal; grievance dismissed. *Re ITT Cannon Electric Canada and United Automobile Workers of America, Local 1090; Graham grievance*, April 7, 1982. Teplitsky — 2 pages. (77)

Reassignment of tasks: senior employee given vacant position rather than displacing junior employees in own department — grievor entitled to position; grievance allowed. *Re Lawson Packaging and Graphic Arts International Union, Local 211; Morihovitis grievance*. See (69), *supra*. (78)†

#### Overtime

Distribution — allocated to employee outside group eligible for distribution; damages awarded for lost overtime opportunity. *Re Chromasco Limited and United Steelworkers of America, Local 4632; Davidson grievance*, March 16, 1982. Roach — 7 pages. (79)

**Distribution:** contract workers "normally" performing maintenance welding — no requirement that it be performed a majority of the time; grievance allowed. *Re Falconbridge Nickel Mines Limited and Sudbury Mine, Mill and Smelter Workers Union, Local 598; Fowler grievance*, February 17, 1982. Majority: Linden, Valin; partial dissent (on remedy): O'Neil — 17 pages. (80)

Remedy for improper distribution: grievor in new group — employer to make every effort to award "in kind" remedy. *Re Falconbridge Nickel Mines Limited and Sudbury Mine, Mill and Smelter Workers Union, Local 598; Fowler grievance*. See (80), *supra*. (81)

#### Probationary Employee

Calculation of probationary period — did not complete forty-five working days and therefore did not acquire seniority — grievor not possessing recall rights due to lack of seniority; grievance denied. *Re Co-operative Regionale de Nipissing Sudbury Limited and Retail, Wholesale and Department Store Union, Local 545; LaFond grievance*, April 12, 1982. O'Shea — 10 pages. (82)

#### Procedure

Exclusion of press — public interest in proceedings; proceedings to be open to public not press. *Re Perley Hospital and Canadian Union of Public Employees, Local 870; Hurley grievance*, March 10, 1982. Majority: Bernstein, Baxter; dissent: Dinsdale — 25 pages. (83)\*

#### Promotion

Bargaining unit employees having preference over "new hires" — "new hire" including employees from outside bargaining unit; grievance allowed. *Re Bell Canada and Communications Workers of Canada; Steele grievance*, April 6, 1982. Majority: Teplitsky, Beaulieu; dissent: Healy — 8 pages. (84)

Position on list — according to requalification examination where seniority equal; grievances dismissed. *Re Etobicoke, Corporation of Borough of, and Etobicoke Professional Fire Fighters Association, Local 1137; union grievances*, April 13, 1982. Brent — 12 pages. (85)

Qualifications — grievor lacking experience to meet all requirements; grievance dismissed. *Re Bank of Montreal, Devonshire Mall Branch, Windsor, and Union of Bank Employees (Ontario), Local 2104; Taylor grievance*, undated. Majority: McLaren, McGivney; dissent: West — 17 pages. (86)

Qualifications: grievor and successful applicant equal — seniority governing; grievance allowed. *Re Woolwich, Corporation of Township of, and Canadian Union of Public Employees, Local 1542; Williamson grievance*, April 21, 1982. McLaren, Lewis, Martin — 11 pages. (87)

Vacancies posted simultaneously: grievor declined job he was awarded and grieved other position; neither applicant qualified — management's decision neither arbitrary nor discriminatory; grievance denied. *Re Neelon Casting Limited and United Steelworkers of America, Local 6363; McCarthy grievance*, April 16, 1982. Hinnegan — 14 pages. (88)

#### Recall

Short strike constituting "temporary fluctuation": recall taking account of seniority but based on previous work schedule — union not establishing individual claims of violated seniority rights; grievance dismissed. *Re Algoma Steel Corporation Limited and United Steelworkers of America, Local 2251; union grievance*. See (51), *supra*. (89)†

#### Retirement

Compulsory retirement policy — adequate notice given — refusal to continue employment not arbitrary, discriminatory, unreasonable nor in bad faith; grievance dismissed. *Re Queensway General Hospital and Canadian Union of Public Employees, Local 1106; Reid grievance*, April 13, 1982. Majority: P. Picher, Sanderson; dissent: Switzman — 27 pages. (90)\*

"Retirement" to be interpreted as reaching the age of sixty-five — "normal retirement" to be interpreted to mean events which occur when employee reaches retirement age; employer's obligations to be determined by these definitions. *Re Ottawa, Corporation of City of, and Ottawa-Carleton Public Employees Union, Local 503, Canadian Union of Public Employees; policy grievance*, January 27, 1982. Majority: Willes, Gladu; dissent: Kearney — 16 pages. (91)

#### Scheduling of Work

Increase of staff — employer failing to apply seniority provision; direction to pay lost wages. *Re York Hannover Hotels Limited (The Skyline, Ottawa) and Hotels, Clubs, Restaurants, Tavern Employees Union, Local 261; Baptiste et al grievances*, March 25, 1982. Majority: Curtis, Robichaud; addendum: Roine — 5 pages. (92)

Mutual three-day shift change refused — reasonableness not to be reviewed unless required by collective agreement; grievance dismissed. *Re Ethyl Canada Incorporated and Energy and Chemical Workers Union, Local 300; Ptak grievance*, April 12, 1982. Barton — 7 pages. (93)

#### Sick Pay

Entitlement: grievor capable of doing assigned tasks — leaving work without permission and remaining absent without prompt medical help; grievance dismissed. *Re Toronto Star Newspapers Ltd. and Southern Ontario Newspaper Guild; Cheeseman grievance*. See (12), *supra*. (94)

#### Transfer

Entitlement — clause confers preference to employees with seniority over new hires only; grievance dismissed. *Re Inco Metals Company and United Steelworkers of America, Local 6500; Albert grievance*, April 16, 1982. Majority: Gorsky, Filion; dissent: Carriere — 6 pages. (95)

#### Union Security

Dues deduction — employer not required to deduct a temporary increase in dues — not part of "regular monthly membership dues" nor a "regular uniform amount"; grievance dismissed. *Re George Brown College of Applied Arts and Technology, Board of Governors of, and Ontario Public Service Employees Union; union grievance*, April 26, 1982. Majority: Brunner, Hallsworth; dissent: Craven — 17 pages. (96)

**Wages**

Annual salary — not to be increased for days worked beyond number specified; grievance dismissed. *Re Oxford, Corporation of County of, and Canadian Union of Public Employees, Local 1146; union grievance*, April 15, 1982. Black — 6 pages. (97)†

Compulsory direct deposit of wages — policy reasonable; grievance dismissed. *Re Victoria Hospital Corporation and London and District Service Workers' Union, Local 220; union grievance*, April 26, 1982. Majority: Brent, Hassell; dissent: Beaulieu — 19 pages. (98)\*

Dirty work pay claimed: rates not restricted to work outside normal classification — spraying of rust inhibitor not type of work contemplated; grievance dismissed. *Re Collingwood Shipyards, Division of Canadian Shipbuilding and Engineering Limited, and United Steelworkers of America, Local 6320; group grievance*, April 23, 1982. Black — 9 pages. (99)†

Incentive bonus where transfer to job in different classification — grievance allowed in part. *Re Livingston Industries Limited and International Woodworkers of America, Local 2-167; Norris grievance*, April 14, 1982. Majority: Saltman, Navarretta; dissent: O'Neil — 11 pages. (100)

Incentive pay — grievor's job not on incentive pay plan in collective agreement; grievance dismissed. *Re Crouse-Hinds Canada Limited and United Automobile Workers of America; Brown grievance*, April 5, 1982. Majority: O'Shea, Filion; dissent: Bruce — 13 pages. (101)

Retroactivity of re-classification — new wage rate payable from date employer's personnel department notified of employee's request for re-classification. *Re Carleton University and Carleton University Support Staff Association, Local 2424; Babcock and policy grievances*, March 17, 1982. Majority: Roine, Kearney; dissent: Cyr — 17 pages. (102)

"Ripple clause" — adjustment of maximum rates in labour grades 2-8 only when there has been an adjustment of maximum rate in labour grade 1; grievance denied. *Re Mattel Canada Inc. and International Union of Allied, Novelty and Production Workers, Local 905; policy grievance*, January 28, 1982. MacDowell — 14 pages. (103)

Travelling bonus — travel distance restricted to a maximum of three miles in winter months — no compensation to be awarded as grievors did not follow normal process of grievance settlement. *Re J.H. Normick Inc., Woodlands Division, and Lumber and Sawmill Workers' Union, Local 2995, United Brotherhood of Carpenters and Joiners of America; policy grievance*, April 13, 1982. Majority: Linden, Fyshe; dissent in part: Buckland — 12 pages. (104)

**Welfare Plans**

Arbitrability — employer not entitled to view matter as solely between employee and insurer, especially if it gives instructions to insurer; objection denied. *Re Cryovac Division, W.R. Grace and Co. Ltd., and Canadian Union of Operating Engineers and General Workers, Local 101; Dunkley grievance*, April 17, 1982. Jolliffe — 10 pages. (105)†

Extended disability — grievor not producing medical evidence to demonstrate he was "totally disabled"; grievance denied. *Re DeHavilland Aircraft of Canada Limited and United Automobile Workers, Local 112; Pangilinan grievance*, March 30, 1982. Gorsky — 9 pages. (106)

Failure to attend medical examination — company bound to provide benefits and not just contract of insurance; grievances allowed in part. *Re DeHavilland Aircraft of Canada Limited and United Automobile Workers, Local 112; Barker grievance and policy grievance*, March 31, 1982. Gorsky — 29 pages. (107)

**Work Assignment**

Assignment of bargaining unit work to new management position not allowed by exceptions specified in collective agreement — cease and desist orders granted. *Re CKVR Television Channel 3 Ltd. and National Association of Broadcast Employees and Technicians; union grievance*, April 15, 1982. Jolliffe — 19 pages. (108)

Employees outside bargaining unit inputting data into computer — not in job description of inspectors — specific provision against assigning bargaining unit work to others; grievance allowed. *Re Spar Aerospace Limited and United Automobile Workers of America, Local 673; union grievance*, April 23, 1982. H.D. Brown — 15 pages. (109)

Foreman's work primarily non-supervisory — held to be member of bargaining unit; grievance allowed. *Re G.W. Martin Wood Products Limited and International Woodworkers of America; union grievance*, April 15, 1982. Majority: Teplitsky, Bedard; dissent: Smeenk — 6 pages. (110)

Journeymen — company possessing right to assess journeyman's qualifications with regard to a particular job; grievance dismissed. *Re DeHavilland Aircraft Ltd. and United Automobile Workers of America, Local 112; union policy grievance*, March 29, 1982. Gorsky — 5 pages. (111)

Part-time employees — employer not prevented from assigning part-time employees to work on statutory holidays as full-time employees not thereby eliminated or displaced; grievance dismissed. *Re Toronto Star Newspapers Limited and Southern Ontario Newspaper Guild, Local 87*. See (55), *supra*. (112)

Production of telex master tapes — not exclusive function of bargaining unit employees; grievance dismissed. *Re DeHavilland Aircraft of Canada Limited and United Automobile Workers of America, Local 673; union grievance*, April 14, 1982. H.D. Brown — 10 pages. (113)

Sealing work — no provision that incidental sealing exclusive jurisdiction of sealers; grievance dismissed. *Re DeHavilland Aircraft Ltd. and United Automobile Workers of America, Local 112; Labradour grievance*, March 31, 1982. Gorsky — 8 pages. (114)

Teaching workload calculation: three-month periods and monthly "rolling" basis used — no requirement that weekly "roll" period be used; grievance dismissed. *Re Fanshawe College of Applied Arts and Technology and Ontario Public Service Employees Union; Aranton grievance*, April 8, 1982. Majority: Brent, Brady; dissent: Robbins — 15 pages. (115)

Union jurisdiction: grievor replaced by employee from another union — grievor's union having exclusive jurisdiction over job; grievance allowed. *Re Conklin Lumber Company Limited (Discount Dave's) and Teamsters, Chauffeurs, Warehousemen and Helpers Union, Local 880; Budinsky grievance*, March 31, 1982. Stewart — 6 pages. (116)†

## Construction Industry Awards — Ontario Labour Relations Board

The following awards were filed during the months of March and April, 1982.

### Collection

Welfare fund, pension fund, training fund and union dues — order to pay issued. *Re Fine Form Construction Company Ltd. and Labourers' International Union, Local 183*, February 10, 1982. Springate — 2 pages. (117)

### Collective Agreement

Provincial agreement — no abandonment of bargaining rights and estoppel not applicable; employer bound; grievance allowed. *Re Culliton Brothers Limited and Ontario Sheet Metal Workers' Conference; union grievance*, March 17, 1982. Furness, Ade, Ballantine — 15 pages. (118)

Provincial agreement — several companies treated as one employer — common management, ownership or financial control, related operations and public representation as integrated enterprise — deemed recognition of union; bound by provincially legislated collective agreement. *Re Inducon Construction (Northern) Inc.; Inducon Development Corporation; Inducon Construction of Canada Limited; Desbil Management Inc. and Inducon Design/Build Associates, and United Brotherhood of Carpenters and Joiners of America, various locals; union grievance*, March 11, 1982. Furness, Ade, Ross — 20 pages. (119)

### Discharge

Insubordination and refusal to wear safety equipment — insubordination provoked; discipline for safety violation excessive; substitution of one-day suspension. *Re Ontario Hydro and United Association of Journeymen and Apprentices of Plumbing and Pipe Fitting Industry*, February 19, 1982. Franks — 6 pages. (120)

Failure to perform work as speedily as employer expected — no warning given — no just cause; grievances allowed. *Re Proweld Company Limited and International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Local 128; Duffy and William grievances*, March 17, 1982. Howe, Cooke, Wightman — 11 pages. (121)

### Procedure

Sector issue and jurisdictional dispute — determination under s. 150 to be obtained prior to consideration of complaint under s. 91. *Re Yellow Jacket Welding Company Limited and United Association of Journeymen and Apprentices of Plumbing and Pipe Fitting Industry, Local 46; union grievances*, March 23, 1982. Furness, Donnelly, Rutherford — 3 pages. (122)

### Work Assignment

"Local area work practice" — onus upon union to establish employer recognition of work on balance of probabilities. *Re General Contractors Association of Hamilton, Labour Relations Bureau of Ontario General Contractors Association, Acoustical Association, Resilient Flooring Contractors Association, Caulking Association, Industrial Contractors Association of Canada and Interior Systems Contractors, and Ontario Provincial Council of United Brotherhood of Carpenters and Joiners of America, and United Brotherhood of Carpenters and Joiners of America, Local 18*; February 25, 1982. Satterfield — 22 pages. (123)

## The Hospital Labour Disputes Arbitration Act

The following interest arbitration awards under *The Hospital Labour Disputes Arbitration Act* were filed with the Office of Arbitration during the month of April, 1982.

*Brantford General Hospital and I.U.O.E., Local 722*.

O'Shea, Mustard, Grigsby — 7 pages.

*Dearness Home for the Aged (London, Corporation of City of,) and London and District Service Workers' Union, Local 220*. H. Brown, Yeo, Robbins; addendum: Robbins — 26 pages.

*Golden Plough Lodge (Northumberland County) and O.N.A. Majority*: Ladd, McIntyre; partial dissent: Billings — 15 pages.

*Norfolk Hospital Association of Simcoe and London and District Service Workers' Union, Local 220*, (interim award). H. Brown, McGowan, Robbins; addendum: McGowan — 9 pages.

*Peel Manor Home for the Aged and Sheridan Villa Homes for the Aged (Peel, Regional Municipality of,) and C.U.P.E., Locals 966 and 2101*. Swan, Filion, Switzman; addenda to follow: Filion, Switzman — 16 pages.

*Riverside Hospital of Ottawa and O.P.S.E.U. (Technologists)*. Baum, Stansel, Demalpas — 10 pages.

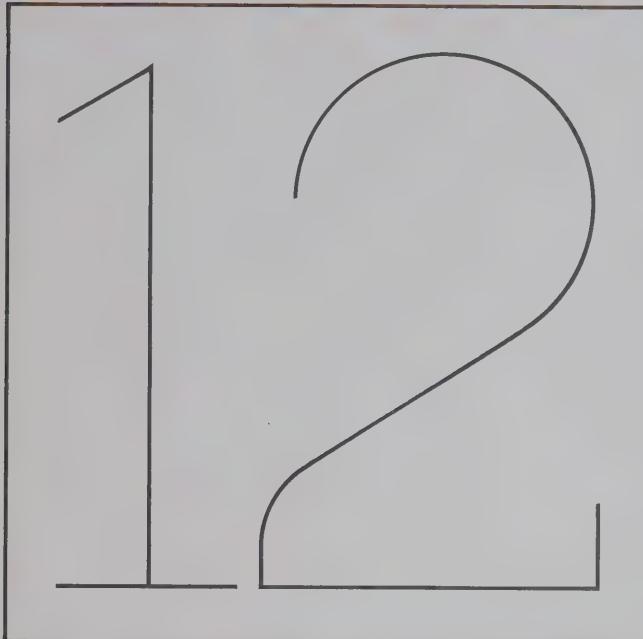
*Willson Nursing Home Limited and London and District Service Workers' Union, Local 220*. Ladd, Perkins, Robbins; addendum: Robbins — 14 pages.

### Filing Awards

The attention of chairmen of boards of arbitration and sole arbitrators is drawn to the regulations under *The Labour Relations Act* which require every arbitrator to file a copy of his award with the Office of Arbitration within ten days of issuing such award.

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# Monthly Bulletin



Ontario Ministry of Labour



Hon. Russell H. Ramsay, Minister  
T.E. Armstrong, QC, Deputy Minister

Office of Arbitration  
400 University Avenue, 6th Floor  
Toronto, Ontario  
M7A 1T7  
Tel. (416) 965-5669

Miss Jean M. Read, Director

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## Purchase of Awards

All awards listed in the *Monthly Bulletin* may be reviewed at the Office of Arbitration, 400 University Avenue, 6th Floor, Toronto, Ontario, M7A 1T7. Copies may be purchased for a fee of 50¢ per page and orders will be filled upon receipt of a request and a cheque or money order payable to the Treasurer of Ontario, for the applicable amount.

## Appointment of Arbitrators

Forms for requests for appointment of arbitrator under section 45 of *The Labour Relations Act* are available on request, from the Office of Arbitration.

## Grievance Arbitration

The following awards were filed with the Office of Arbitration during the months of March and May, 1982. The summary was prepared under the supervision of C.G. Simmons, B.A., B.C.L., LL.M.; D.D. Carter, B.A., B.C.L., LL.B. and K.P. Swan, P.Eng., LL.B.

\* Indicates award to be reported in full or in part in *Labour Arbitration Cases*.

† Indicates award issued under section 45 of *The Labour Relations Act*.

## Arbitrability

Abandonment of grievance for sixteen months — grievance not arbitrable. *Re Rockwell International of Canada Limited and U.A.W., Local 1941; individual grievance*, May 17, 1982. Little — 21 pages. (1)

Discharge of probationary employee — collective agreement when read as a whole and in light of parties' intentions bars probationers from grieving matters of discipline or dismissal; grievance not arbitrable. *Re Peel Board of Education and C.U.P.E.; Del Mundo grievance*, May 11, 1982. Majority: Beck, Macdonald; dissent: Gallus — 19 pages. (2)\*

Provision for special meeting — provision directory not mandatory; grievance arbitrable. *Re Thunder Bay Ambulance Service Inc. and S.E.U., Local 268; Swan grievance*, May 26, 1982. P. Picher — 13 pages. (3)

## Classification

Apprenticeship agreement with grievor — designed to keep grievor from enjoying representation by union; agreement declared to be void. *Re Disney Display (Division of Intex Trade and Consumer Shows Limited) and Carpenters District Council of Toronto and Vicinity; Robinson grievance*, May 10, 1982. Majority: O'Shea, Tait; dissent to follow; Laar — 21 pages. (4)

New classification created — administrative duties similar to head nurse position; head nurse rate applicable but education increments not to be paid. *Re Windsor Western Hospital Centre Inc. (Richview Unit) and O.N.A.; Duke grievance*, May 10, 1982. Majority: Brent, Beaulieu; dissent: Bartlet — 24 pages. (5)

Re-classification — grievor, in a lower classification, doing exactly same work as in higher classification and being paid less money; grievance allowed. *Re Bell Canada and Communications Workers of Canada; Harris grievance*, May 17, 1982. Beck, Churchill-Smith, Beaulieu — 8 pages. (6)

#### Collective Agreement

Retroactivity — formula for cash settlement to be applied to unused sick credits at time of retirement; grievance allowed. *Re Arnprior and District Memorial Hospital and O.N.A.; McNab grievance*, April 23, 1982. Majority: Weatherill, Beaulieu; dissent: Winkler — 10 pages. (7)\*

#### Contracting Out

Individual contract outside collective agreement — employer in violation of collective agreement — claim for compensation to be presented within twenty-one days. *Re Toronto, Corporation of City of, and C.U.P.E., Local 79; Briggs grievance*, May 4, 1982. Brent — 16 pages. (8)

Overtime — employer obligated to offer overtime work to grievors before contracting out; grievances allowed. *Re Webster Manufacturing (London) Limited and International Molders' and Allied Workers' Union, Local 49; Lumley and Samra grievances*, April 30, 1982. Samuels — 6 pages. (9)

#### Damages

Termination without notice — vacation pay and credits owing; pension payment; quantum determined. *Re Thompson Printing Company and Graphic Arts International Union, Local 542; Cairns grievance*, May 17, 1982. Baum — 8 pages. (10)†

#### Demotion

Non-disciplinary demotion — grievor unable to meet standards established by employer; grievance denied. *Re Canada Safeway Limited and Retail, Commercial and Industrial Union, Local 206; Palmer grievance*, April 6, 1982. Majority: Houston, Gray; dissent: Rudrum — 23 pages. (11)

Physical incapacity — contrary medical evidence; reinstatement to former position with compensation. *Re Windsor Utilities Commission and I.B.E.W., Local 636; North grievance*, May 16, 1982. Majority: Samuels, Schaefer; dissent: Donnelly — 25 pages. (12)

#### Discharge

Absence from work without permission; falsification of company records — grievor as security guard in position of trust; grievance dismissed. *Re National Steel Car Corporation Limited and National Steel Car Guards Union; Brearley grievance*, May 10, 1982. Majority: Hinnegan, Paulin; dissent: Wyatt — 13 pages. (13)

Absence without leave — explanation of grievor must be accepted as factual; grievance allowed. *Re American Hoist of Canada Limited and U.A.W., Local 1285; Chachaj grievance*, April 30, 1982. Egan — 9 pages. (14)

Absenteeism — record of absenteeism sufficient to support discharge; grievance denied. *Re Air Canada and I.A.M., Lodge 148; Tibbetts grievance*, May 5, 1982. Swan — 10 pages. (15)

Absenteeism — grievor's medical condition preventing her return to work — grievance dismissed. *Re Maple Lodge Farms Limited and U.F.C.W.U., Local 1105P, Region 18; Santos grievance*, May 13, 1982. Boscariol — 6 pages. (16)†

Absenteeism: employee on long-term disability cleared for work by company doctor on terms — misunderstanding as to whether terms met; confusion as to when and where to report causing employee's failure to report as scheduled; grievance allowed. *Re Loblaw's Limited and U.F.C.W.U., Local 1000 A; Curry grievance*, May 17, 1982. Beck — 13 pages. (17)

Absenteeism and lateness — reasonable explanation provided when necessary; grievance allowed. *Re Burndy Inc. and I.A.M., Local 2546; Gibbon grievance*, May 12, 1982. Brent, Affleck, Switzman — 6 pages. (18)

Abuse of child alleged — allegations not sustained by evidence; notice of resignation substituted and damages until alternative employment obtained. *Re Mini-Skools Limited and O.P.S.E.U.; George grievance*, April 22, 1982. Weatherill, Smeenk, Robbins; addendum: Robbins — 9 pages. (19)\*

Abuse of sick leave alleged — no abuse of welfare plan; reinstatement with full compensation. *Re Port Arthur Labour Association and S.E.I.U., Local 268, Espuna grievance*, May 11, 1982. Adamson — 8 pages. (20)†

Alcoholism — rehabilitation programme abandoned; grievance dismissed. *Re Exide Canada Inc. and I.A.M., Local 512; McGrath grievance*, May 19, 1982. Beck, Morley, Aslin — 12 pages. (21)

Assault on personnel manager — grievance dismissed. *Re Spalding Canada Ltd. and International Woodworkers of America; Hockley grievance*, May 13, 1982. Majority: MacDowell, Joyce; dissent: Millard — 24 pages. (22)

Assault resulting in injury of fellow employee — past record poor; grievance denied. *Re Air Canada and Daniel Uhrin*, May 5, 1982. Swan — 8 pages. (23)

Assault with knife upon supervisor — serious injury prevented by intervention of others — no apology by grievor; grievance dismissed. *Re Toronto General Hospital and C.U.P.E., Local 2001; Solomon grievance*, April 28, 1982. Majority: Brunner, Whyte; dissent: Robbins — 20 pages. (24)

Careless error causing environmental damage — blemished work record; grievance dismissed. *Re Uniroyal Chemical and U.S.W.A., Local 13691; Oxby grievance*, April 23, 1982. Houston — 9 pages. (25)†

Failure to report — consent from supervisor; grievor not required to provide subsequent explanation; reinstatement with compensation. *Re Thunder Bay Ambulance Service Inc. and S.E.U., Local 268; Swan grievance*. See (3), *supra*. (26)

Failure to report to work; sexual harassment alleged — grievor had an obligation to discuss these conditions with her employer; grievance allowed in part. *Re Canadian Union of Public Employees and O.P.E.I.U., Local 491; R.W. grievance*, May 17, 1982. Swinton, Bardos, Vickers — 38 pages. (27)\*

Falsification of application form — grievor acting innocently though wrongly — job performance not affected; reinstatement without compensation. *Re Coca-Cola Limited and Canadian Union of United Brewery Workers; Bright grievance*, May 6, 1982. H.D. Brown — 15 pages. (28)\*

Illegal strike; encouragement and participation by union president — discharge varied to suspension for ten months with condition; grievance allowed. *Re St. Joseph's Health Centre and C.U.P.E., Local 1144; Kenny grievance*, May 4, 1982. Majority: Schiff, Lewis; dissent: Filion — 20 pages. (29)\*

Improper disposal of mail — behaviour influenced by alcohol addiction; conditional reinstatement. *Re Canada Post Corporation and Letter Carriers Union of Canada; Craffigan grievance*, May 1, 1982. Jolliffe — 22 pages. (30)

Insubordination and physical altercation with supervisor — grievor provoked by push from supervisor; reinstatement without compensation. *Re Firestone Canada Inc. (Hamilton Plant) and United Rubber Workers of America, Local 113; Magill grievance*, May 14, 1982. Egan — 6 pages. (31)†

Lateness — discharge reduced to suspension without compensation; grievance allowed. *Re Fleet Industries, Division of Ronyx Corporation Limited, and I.A.M., Lodge 171; Davis grievance*, May 10, 1982. Dunn — 4 pages. (32)

Physically unfit to perform work — insurance against long term disability provided in collective agreement — employer not having right to discharge physically disabled employee; grievance allowed. *Re Kelsey-Hayes Canada Limited, Windsor Division, and U.A.W., Local 195; Harangozo grievance*, May 17, 1982. Samuels — 6 pages. (33)

Picket line altercation — damage to employer's truck — good work record; reinstatement without compensation. *Re Indalex, Division of Indal Limited, and U.S.W.A., Local 2729; Paris grievance*, April 29, 1982. O'Connor — 7 pages. (34)†

Probationary employee — attendance and punctuality poor; company having right not to continue employment of probationers whom it considers not suitable. *Re Air Canada and Canadian Air Line Flight Attendants Association; Edgar grievance*, May 13, 1982. Hinnegan — 17 pages. (35)

Procedure — failure to comply strictly with provisions of collective agreement — disciplinary action void; grievance allowed. *Re Budd Automotive Company of Canada Inc. and U.A.W., Local 1451; McPhail grievance*, May 17, 1982. H.D. Brown — 16 pages. (36)

Insubordination: refusal to follow orders — work record good; grievance allowed. *Re Don-Ivan Associates Limited operating as Daisy Decorative Products and Toronto Joint Board Amalgamated Clothing and Textile Workers Union; Rao grievance*, May 26, 1982. Arthurs — 6 pages. (37)

Insubordination: refusal to follow orders — culminating incident; grievance denied. *Re Don-Ivan Associates Limited operating as Daisy Decorative Products and Toronto Joint Board Amalgamated Clothing and Textile Workers Union; Vespier grievance*. See (37), *supra*. (38)

Insubordination: refusal to operate snowblower without spotter — progressive discipline culminating in discharge; grievance dismissed. *Re Midland Corporation of Town of, and O.P.S.E.U., Local 328; Shaw grievance*, May 18, 1982. Devlin — 18 pages. (39)†

Refusal to take prescribed medical precautions — history of lost time; grievance dismissed. *Re Rockwell International of Canada Limited and U.A.W., Local 1941; individual grievance*. See (1), *supra*. (40)

Section 61.5 of *Canada Labour Code*: holding another job while in company's employ alleged — no evidence of damage to company at time of discharge; grievance allowed. *Re CFGM Broadcasting Limited, Richmond Hill, and James A. Morrow*, April 30, 1982. Betcherman — 9 pages. (41)

Theft from employer over a period of years — trustworthiness destroyed; grievance denied. *Re Ontario Produce Company, Ontario Food Division of Oshawa Group Limited, and Teamsters Union, Local 419; Henderson grievance*, May 19, 1982. Majority: H.D. Brown, Houck; dissent: Stewart — 48 pages. (42)

Theft of company property and insubordination alleged — possession of company property in locker and leaving company premises after refusal of permission — intent to steal not proven but insubordination found; four-month suspension substituted. *Re Ontario Hydro and C.U.O.E.; grievance no. H81-MM7*, May 19, 1982. Adell, Marszewski, Abbott — 15 pages. (43)

Unauthorized absence — company not complying with mandatory procedures in collective agreement; grievance allowed. *Re Denison Mines Limited and U.S.W.A.; Simard grievance*, May 14, 1982. Adams — 21 pages. (44)

Work performance: inability to meet production standard — deliberate — poor work record; grievance dismissed. *Re Waterloo Metal Stampings Limited and U.S.W.A., Local 7155; Singh Mutta grievance*, April 23, 1982. Egan — 6 pages. (45)†

#### Discipline

Absenteeism — medical evidence adduced inadequate to justify — past absenteeism record poor; five-day suspension upheld; grievance dismissed. *Re Stelco Inc., Hilton Works, and U.S.W.A., Local 1005; Jarvis grievance*, May 17, 1982. Majority: R.J. Roberts, Storie; dissent: McDermott — 11 pages. (46)

Assault — pinching elderly patient alleged — not proven; grievance allowed; five-day suspension revoked. *Re Lincoln Place Nursing Home and S.E.I.U., Local 204; Jones grievance*, May 27, 1982. Majority: Prichard, Beaulieu; dissent: Sargeant — 18 pages. (47)

Drunkenness on job — one-day suspension; grievance dismissed. *Re Canadian Hanson Limited and U.S.W.A.; Haines grievance*, April 26, 1982. Egan — 4 pages. (48)†

Insubordination and refusal to follow work order — step 4 disciplinary reminder reduced to step 3 disciplinary reminder. *Re Inco Metals Company and U.S.W.A., Local 6500; Campbell grievance*, April 28, 1982. Majority: Gorsky, Guillet; dissent: Kort — 28 pages. (49)

Insubordination to foreman — one-day suspension justified; grievance denied. *Re Carling O'Keefe Breweries Limited and Canadian Union of United Brewery Workers, Local 325; Travassos grievance*, April 30, 1982. P. Picher — 8 pages. (50)

Insubordination: verbal threat to foreman — three-day suspension sustained; grievance dismissed. *Re Rothmans of Pall Mall Canada Limited and Bakery, Confectionery and Tobacco Workers' International Union, Local 319T; Pfeifer grievance*, April 28, 1982. Schiff — 4 pages. (51)

Work performance — many allegations unsubstantiated — award replaced record in substantiated breaches; grievance allowed in part. *Re Douglas Memorial Hospital and C.U.P.E., Local 1531; Rutter grievance*, May 13, 1982. Prichard — 11 pages. (52)†

Written reprimand for causing production loss — other contributory factors — grievor partially at fault; different letter of reprimand substituted. *Re Rothmans of Pall Mall Canada Limited and Bakery, Confectionery and Tobacco Workers' International Union, Local 319; Storry grievance*, May 25, 1982. M. Picher — 11 pages. (53)

### Estoppel

Termination of estoppel — one-year notice sufficient; grievance denied. *Re Hydro Electric Power Commission of Ontario and C.U.P.E., Local 1000; Green grievance*, May, 1982. Ianni — 17 pages. (54)\*

Termination of estoppel — union put on notice by memo; grievance dismissed. *Re Toronto Library Board and C.U.P.E., Local 1582; policy grievance*, May 11, 1982. Houston — 12 pages. (55)†

### Evidence

Extrinsic evidence regarding detrimental reliance and latent ambiguity admissible. *Re Toronto Library Board and C.U.P.E., Local 1582; policy grievance*, April 9, 1982. Houston — 6 pages. (56)†

### Grievance Procedure

Timeliness — no reasonable grounds for extending time limits. *Re Children's Aid Society of Metropolitan Toronto and C.U.P.E., Local 2316; Carthew grievance*, May 21, 1982. Brent, Filion, Lewis — 12 pages. (57)

### Health and Safety

Order of government inspector requiring maintenance employees to wear safety boots — employer not required to pay for and provide; grievance dismissed. *Re West Park Hospital (Service) and S.E.U., Local 204; union grievance*, May 11, 1982. Majority: McLaren, Storie; dissent: Simon — 7 pages. (58)

### Holiday Pay

Additional part-day holiday — employees required to work are entitled to payment as for work performed on a holiday; grievance allowed. *Re Dominion Stores Limited and R.W.D.S.U., Local 414; union grievance*, March 15, 1982. Weatherill, McNevin, White — 9 pages. (59)

Illness: statutory holidays occurred during period when grievor was ill and receiving weekly indemnity benefits — payment in such situations covered in collective agreement; grievance allowed. *Re Central Park Lodges of Canada and London and District Service Workers' Union, Local 220; Copley grievance*, undated. Linden, Stewart, Beaulieu — 6 pages. (60)

"Lieu day" — company, not employee, having right to designate day to be taken "in lieu"; grievance denied. *Re General Bakeries Limited and Bakery, Confectionery and Tobacco Workers' International Union, Local 264; Girovart grievance*, May 21, 1982. Dunn — 5 pages. (61)

Qualifying days: return from strike on day after holiday — work scheduled during strike; employees did not work last scheduled work date preceding holiday; grievance dismissed. *Re 3M Canada Inc., Industrial Mineral Products Division, and United Cement, Lime and Gypsum Workers; policy grievance*, May 7, 1982. M. Picher — 12 pages. (62)\*

Unilateral designation of qualifying days — inconsistent with collective agreement — clear agreement necessary; grievance allowed. *Re Kenrock Tools Limited and U.S.W.A., Local 7642; Mohammed grievance*, May 5, 1982. Baum — 8 pages. (63)†

### Interpretation

Ambiguity — none found — extrinsic evidence inadmissible — "complement" signifying total number of employees in bargaining unit at time when vacancy arises; interim award. *Re Ontario Council of Regents for Colleges of Applied Arts and Technology (George Brown College) and O.P.S.E.U. (Support Staff); Morfetas grievance*, May, 1982. Majority: O'Shea, Shuttleworth; dissent: Perrin — 7 pages. (64)

### Job Posting

Change of title and modification of existing job — no vacancy and no posting necessitated; grievances dismissed. *Re Rio Algom Limited and U.S.W.A., Local 5980; policy grievance*, April 23, 1982. O'Shea — 15 pages. (65)

Existence of vacancy — posting of all job vacancies required; grievance allowed. *Re Atomic Energy of Canada Limited and E.C.W.U., Local 1541; union grievance*, April 19, 1982. Majority: Weatherill, More; dissent: Bertuzzi — 12 pages. (66)

Probationary employees — employees must work seventy-five days in order to be credited with seniority and therefore be considered for posted jobs; grievance denied. *Re Cabot Carbon of Canada Ltd. and Oil, Chemical and Atomic Workers International Union, Local 9-14; group grievance*, May 20, 1982. Majority: Hinnegan, Carrier; dissent: Rogers — 10 pages. (67)

Recall of laid-off employees — job posting would be in violation of collective agreement; grievance denied. *Re Newman Structural Steel Limited and Local 734, International Association of Bridge, Structural and Ornamental Iron Workers; Milner grievance*, May 5, 1982. Majority: H.D. Brown, Beresford; dissent: Bosnich — 22 pages. (68)

**Lay-off**

Bumping: grievor bumped to higher-rated classification during lay-off and paid at lower wage rate in progressive scale — grievor inexperienced in newly assigned classification; no further increment to wage rate warranted; grievance dismissed. *Re Colonial Cookies Limited and U.F.C.W.U., Local 617P; LeBlanc grievance*, May 12, 1982. Knopf — 14 pages. (69)†

Bumping rights — grievor lacking skills for desired job — no training period required — no discrimination; grievance dismissed. *Re Canadian General Electric Company Limited and U.E., Local 509; Lowe grievance*, May 4, 1982. Little — 20 pages. (70)†

Bumping rights — group leader not job classification recognized in collective agreement; no bumping rights or redundancy; employee to be returned to job held immediately prior to designation as group leader; grievance dismissed. *Re Haley Industries Limited and U.S.W.A., Local 4820; policy grievance*, April 29, 1982. Majority: O'Shea, Bertuzzi; dissent: Jones — 16 pages. (71)

Bumping rights; grievor refused offer of job of less senior employee — no other job available; no discrimination; grievances dismissed. *Re Hammant Car and Engineering Limited and U.S.W.A., Local 8179; Coruzzi grievances*, May 5, 1982. Black — 11 pages. (72)†

Existence of lay-off; no reduction in work force — no lay-off; employer could transfer grievor to lower-rated classification; grievance dismissed. *Re Procast Foundries Inc. and International Molders and Allied Workers Union, Local 445; Stanaitis grievance*, May 21, 1982. H.D. Brown — 19 pages. (73)

Part-time employees given notice of lay-off simultaneously with full-time employees — no contravention of seniority rights; grievances dismissed. *Re Macdonalds Consolidated Limited and Teamsters, Local 419; Wells and Pattison grievances*, May 7, 1982. McKechnie — 11 pages. (74)†

Qualifications — grievor lacking requisite skill and ability to bump into job of junior employee; grievance dismissed. *Re Fleet Industries (Division of Ronyx Corporation) and I.A.M.; Larocque grievance*, May 17, 1982. Beck — 12 pages. (75)

Qualifications — grievor possessing seniority and qualifications; grievance allowed. *Re Bestpipe Limited and United Glass and Ceramic Workers of North America; La Croix grievance*, April 15, 1982. Teplitsky, McGowan, Steep — 5 pages. (76)

Qualifications to do available work — union did not meet onus to establish *prima facie* case; grievance dismissed. *Re Johnson Matthey Limited and U.S.W.A., Local 9046; policy grievance*, April 29, 1982. Devlin — 10 pages. (77)†

**Maternity Leave**

Vacation pay entitlement reduced because grievor was on maternity leave — disability due to pregnancy not included in collective agreement; grievance denied. *Re DeHavilland Aircraft Company of Canada and U.A.W., Local 673; Bettie grievance*, May 25, 1982. Gorsky — 6 pages. (78)

**Overtime**

Assignment — student employee given overtime on three occasions — no violation; grievance dismissed. *Re Rio Algom Limited and U.S.W.A., Local 5417; Beeson grievance*, May 27, 1982. P. Picher — 16 pages. (79)

Distribution — grievor having better claim than "designated individuals"; grievance allowed. *Re Inco Metals Company and U.S.W.A.; Bazylykut grievance*, May 10, 1982.

Majority: Weatherill, Gurevitch; dissent: Kort — 12 pages. (80)

Employee voluntarily working unauthorized overtime — grievor not denied overtime as none scheduled; grievance denied. *Re Emerson Electric Canada Limited, Napanee, and U.E., Local 522; Campbell grievance*, May 26, 1982. Little — 9 pages. (81)

Entitlement — company failed to assign overtime work to proper classification — no emergency; grievances allowed. *Re Webster Manufacturing (London) Limited and International Molders' and Allied Workers' Union, Local 49; Dinino and Palleschi grievances*, April 22, 1982. McLaren — 8 pages. (82)

Work not assigned as overtime — grievance denied. *Re Erco Industries Limited and U.S.W.A., Local 6304; Colver grievance*, April 30, 1982. O'Shea, Pogson, Sharp — 15 pages. (83)

**Premium Pay**

Call-in: provision for premium for time worked — balance of four hours to be paid at straight time; grievance allowed. *Re White Farm Equipment Canada Limited and U.A.W., Local 458; Eley grievance*, March 16, 1982. H.D. Brown — 9 pages. (84)

**Probationary Employee**

Calculation of probationary period for sessional employee — calculation correct, grievance dismissed. *Re Fanshawe College of Applied Arts and Technology and O.P.S.E.U.; Sweatman grievance*, May 10, 1982. Majority: Brent, Hubert; dissent: McManus — 10 pages. (85)

**Procedure**

Adjournment request by employer — principal witness on maternity leave; four-week adjournment granted as a practical matter. *Re Chedoke Hospitals, Hamilton, and O.P.S.E.U.; Herczeg grievance*, May 12, 1982. Majority: Saltman, Cochrane; dissent: Noonan — 5 pages. (86)

Issue presently before Ontario Labour Relations Board — adjournment until Ontario Labour Relations Board decision. *Re Blue Line Taxi Company Ltd. (Ottawa Taxi Owners and Brokers Association) and C.U.O.E., Local 111; Smith grievance*, May 10, 1982. Fraser — 12 pages. (87)†

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Constable passed over for promotion because of personal life — incidents not relevant to duties; grievance allowed.

*Re Southampton Police Committee for Corporation of Town of Southampton and Southampton Police Association; Bryce grievance*, May 19, 1982. Samuels — 28 pages. (88)

Qualifications — grievor had insufficient knowledge of job; grievance dismissed. *Re Nepean, Corporation of City of, and C.U.P.E., Local 1021; Cayer grievance*, May 10, 1982. Willes — 10 pages. (89)†

Qualifications — grievor's skill, competence and ability not relatively equal to that of incumbent; grievance dismissed. *Re Kitchener, Corporation of City of, and C.U.P.E., Local 791; Peterson grievance*, May 13, 1982. Verity — 16 pages. (90)†

Qualifications — requirement of commercial experience not applied consistently; remitted to employer for reconsideration. *Re St. Joseph's Hospital, London, and London and District Service Workers' Union, Local 220; Costa grievance*, May 21, 1982. Saltman, Coups, Beaulieu — 8 pages. (91)

Qualifications — witnesses agreeing that successful applicant superior; grievance dismissed. *Re Pioneer Chain Saw Corporation Inc. and U.S.W.A.; Fox grievance*, February 25, 1982. Palmer — 7 pages. (92)

Qualifications — evaluation fair and factors appropriate — grievor not relatively equal; grievance dismissed. *Re Ottawa Civic Hospital and C.U.P.E., Local 576; Gagnon grievance*, February 22, 1982. Roach — 8 pages. (93)†

Qualifications — successful applicant not fully qualified — senior grievor lacking threshold qualifications; grievance dismissed. *Re Dahmer Steel Ltd. and U.S.W.A., Local 7138; Vanden Hoogen grievance*, March 1, 1982. O'Shea — 13 pages. (94)

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Junior employees recalled first — necessary to complete specific projects; grievance dismissed. *Re Sandvik Conveyor Canada Limited and U.S.W.A., Local 8164; union grievance*, April 29, 1982. Knopf — 8 pages. (95)†

Recall to part-time work together with part-time workers — most hours of work given to grievors; grievance dismissed. *Re Macdonalds Consolidated Limited and Teamsters, Local 419; Wells and Pattison grievances*. See (74), *supra*. (96)†

Seniority — seniority plant-wide, not departmental; grievances allowed. *Re Barton Tubes Limited and U.S.W.A., Local 14162; Johnson and Street grievances*, May 17, 1982. McKechnie — 15 pages. (97)†

#### Reporting Pay

Acid spill from overloaded storage tank — defective gauge and ineffective supervision of unloading — within company control — reporting pay payable; grievance allowed. *Re Prestolite Battery Division, Eltra of Canada Limited, and U.A.W., Local 252; union grievance*, May 11, 1982. Curtis — 11 pages. (98)

#### Scheduling of Work

Bid runs — no proprietary right of employee to all work nor to all overtime; grievances dismissed. *Re Provost Industrial Tankers Ltd. and Christian Labour Association of Canada; Kenny grievances*, March 4, 1982. O'Connor — 10 pages. (99)

Mandatory training sessions — removal from flight schedule without crediting employees for flight hours — timing at employees' request; grievance dismissed. *Re Wardair Canada (1975) Ltd. and Canadian Air Line Flight Attendants Association; policy grievance*, March 30, 1982. Beatty — 10 pages. (100)

Notice of change — work gang absorbed into new amalgamated unit rather than continuing as separate entity — twenty-four hours notice sufficient; grievance dismissed. *Re Burns Meats Ltd. and U.F.C.W.U.; union grievance*, March 15, 1982. Burkett, Dinsdale, Walsh; addendum: Walsh — 12 pages. (101)

Reduction of hours because of increased efficiency — employer not obliged to schedule full shifts; grievances dismissed. *Re White Eagle Nursing Homes Ltd. and S.E.U., Local 204; individual grievances*, February 26, 1982. Swan, Beaulieu, Graham — 12 pages. (102)

Teachers at adult training centre for inmates; unilaterally scheduled to work in summer months — no violation of collective agreement; grievance dismissed. *Re Provincial Schools Authority and Federation of Provincial Schools Authority Teachers; union grievance*, February 23, 1982. Majority: Little, Ross; dissent: Iler — 35 pages. (103)

#### Seniority

Calculation — grievor requesting that seniority start from date of original hiring; grievance allowed. *Re Active Cartage Limited and Teamsters, Local 938; Johnston grievance*, May 13, 1982. Majority: Springate, Murray; dissent: Petryshen — 17 pages. (104)

Calculation — union requesting that grievor's seniority date from time he stopped as broker and started as driver; grievance denied. *Re Active Cartage Limited and Teamsters, Local 938; union grievance*. See (104), *supra*. (105)

Company-wide seniority being claimed by union — group seniority applicable; grievance dismissed. *Re Toronto-Dominion Centre Ltd., Operating Division, and I.U.O.E., Local 796; Farquharson grievance*, March 4, 1982. Sheppard — 7 pages. (106)†

Loss of seniority — failure to report to company for a period in excess of three working days; grievance denied. *Re Fabricated Steel Products (Windsor) Limited and U.A.W., Local 195; Bakhos grievance*, May 10, 1982. Weatherill — 9 pages. (107)

Seniority terminated after two years on lay-off — no available work, employment properly terminated; long term disability benefit payable to date of termination; grievance dismissed. *Re Lear Siegler Industries Limited and U.A.W., Local 1524; Marion grievance*, May 10, 1982. Weatherill — 6 pages. (108)

Supervisor returned to bargaining unit displacing bargaining unit employee — provision for preference for seniority; grievance dismissed. *Re Snap on Tools of Canada Ltd. and U.S.W.A., Local 5483; union grievance*, May 3, 1982. Samuels — 5 pages. (109)†

Temporary lay-off — seniority provisions not referring to situation; grievances dismissed. *Re Savage Shoes Limited (Preston Plant, Cambridge) and Amalgamated Clothing and Textile Union, Shoe Division, Local 307; Byrne and Kraatz grievances*, May 7, 1982. Jolliffe — 8 pages. (110)

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Entitlement — grievor claiming option of severance pay in lieu of assignment to supply pool — option only available to redundant employees and grievor found to be surplus; grievance dismissed. *Re Lambton County Board of Education and O.S.S.T.F., Lambton County Branch Affiliate; Boyd grievance*, March 8, 1982. Brunner, Riddell, Cazabon — 17 pages. (111)

Time payment — provision for one-year delay in severance pay — no ambiguity or absurdity; grievance dismissed. *Re Wheatley Manufacturing, Division of International Tools (1973) Ltd., and U.A.W., Local 195; Lafontaine grievance*, March 18, 1982. Palmer — 7 pages. (112)

**Sick Pay**

Regular part-time nurses — accumulation of illness allowance credits and calculation of sick pay payable for one day's absence — order in accordance with filed Minutes of Settlement. *Re Wellington-Dufferin-Guelph Health Unit and O.N.A.; McMurray grievance*, May 7, 1982. Saltman, Billings, Walsh — 4 pages. (113)

Timing of payment — employer entitled to withhold payment of sick leave pay while investigating legitimacy of claim; grievance dismissed. *Re Ottawa Civic Hospital and C.U.P.E., Local 576; union grievance*, February 4, 1982. Majority: D. Scott, Gardner; dissent: Lane — 7 pages. (114)

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Failure to return grievor to permanent department — medical certificate restricting locations in which grievor could work; not willing or able to do old job as required; grievance dismissed. *Re Standard Tube Canada Limited and U.A.W., Local 636; Fallowfield grievance*, May 28, 1982. H.D. Brown — 10 pages. (115)

**Travel Allowance**

Provision for expenses incurred via common carrier — including taxi cab; grievances dismissed. *Re Bell Canada and Communications Workers of Canada; Auger, Stevenson et al grievances*, June 25, 1981. Majority: Beck, Caron; did not concur: Robinson — 6 pages. (116)

Reimbursement for one meal payable for a round trip of a hundred miles or more but taking less than five hours; grievance allowed. *Re Charterways Transportation Limited, Air Terminal Transport Division, and Fuel, Bus, Limousine, Petroleum Drivers and Allied Employees, Local 352; union grievance*, May 17, 1982. Betcherman — 3 pages. (117)†

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Attendance at negotiations with another employer — provision allows for such absences; no interference with employer's operations; grievance allowed. *Re Kitchener, Corporation of City of, and Kitchener City Hall Office, Clerical and Technical Staff, Local 791; policy grievance*, May 19, 1982. R.J. Roberts — 10 pages. (118)\*†

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Scheduling — company may change two week shut-down period for vacations to three weeks; grievance dismissed. *Re Haley Industries Limited and U.S.W.A., Local 4820; policy grievance*, April 28, 1982. Roine — 20 pages. (119)†

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Calculation — C.O.L.A. premium — estoppel preventing inclusion of C.O.L.A. premiums in base; grievance dismissed. *Re Outboard Marine Corporation of Canada Ltd. and U.S.W.A., Local 5009; union grievance*, January 18, 1982. Palmer — 13 pages. (120)\*

Calculation of gross earnings; C.O.L.A. not included because acquiescence in past practice; grievance dismissed. *Re Chromasco Limited and U.S.W.A., Local 4632; policy grievance*, March 4, 1982. Abbott — 11 pages. (121)

Time on lay-off not calculated — provision for coverage of periods of absence; grievance allowed. *Re Wabco Limited and U.E., Local 559; Bowland grievance*, May 20, 1982. Majority: O'Shea, Bosnich; dissent: Cook — 9 pages. (122)

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Bonus rates changed — onus on employer to justify change; grievance allowed in part. *Re Phillips Cables Limited and U.E., Local 510; twister machines grievance*, May 5, 1982. Swan, Millard, McIsaac — 26 pages. (123)

Entitlement to specialist allowance — grievor not using specialist certificate to effect category change; grievance allowed. *Re York Borough Board of Education and Borough of York Women Teachers' Association; Staz grievance*, May 14, 1982. Majority: Saltman, Bethune; dissent: Baker — 11 pages. (124)

Experience increment — prior experience in other nursing homes to be counted; grievance allowed. *Re Little's Nursing Home (Tecumseh) Limited and O.N.A.; association grievance*, May 10, 1982. Betcherman — 5 pages. (125)†

Progression based on job experience — maternity leave period not to be included; grievances dismissed. *Re Fanshawe College and O.P.S.E.U.; Bulsza, Bethune-Davies grievances*, February 26, 1982. Majority: Swinton, Binder; dissent: Perrin — 8 pages. (126)\*

Reclassification initiated by employer — grievors should have been reclassified at that time; grievance allowed. *Re Ontario Hydro and C.U.P.E., Local 1000; Baptiste et al grievance*, May 29, 1982. Majority: McLaren, McCullough; dissent: Abbott — 8 pages. (127)

Remuneration for travel time — entitlement of one grievor established; grievances allowed in part. *Re Spruce Falls Power and Paper Company Ltd. and Lumber and Sawmill Workers' Union, Local 2995; Olivieri and Pecile grievances*, February 5, 1982. Majority: Rayner, Bosnich; partial dissent: Ronson — 13 pages. (128)

Retroactivity — grievors entitled to retroactive wage increase despite bonuses earned in relevant time period; grievances allowed. *Re Great West Timber Ltd. and Lumber and Sawmill Workers' Union, Local 2693; United Brotherhood of Carpenters and Joiners of America; Ranta et al grievances*, March 30, 1982. Beatty, McNutt, Bosnich — 9 pages. (129)

Retroactivity — lieu payment of twelve percent for part-time nurses part of retroactive increase to salary schedule; grievances allowed. *Re Sheridan Villa Home for Aged and Peel Manor Home for Aged, Regional Municipality of Peel, and O.N.A.; twelve part-time employees' grievances*, May 7, 1982. Majority: Brunner, Symes; dissent: Macdonald — 11 pages. (130)

Sex discrimination alleged — no case made out; grievance dismissed. *Re University of Windsor, Board of Governors of, and Faculty Association; Crocker grievance*, February 25, 1982. Delisle — 13 pages. (131)

Special allowance — some university courses could not be used to support claim for special allowance as well as category placement; grievance dismissed. *Re Ottawa Board of Education and Ontario Public School Men Teachers' Federation; Thornton grievance*, May 6, 1982. Majority: Weatherill, Chodos; partial dissent: Doherty — 13 pages. (132)

Temporary transfer — grievor on incentive system claiming average hourly earnings — job rate of temporary classification payable at higher than regular job rate; grievance dismissed. *Re Clare Brothers Ltd. and International Molders and Allied Workers Union, Local 194; Watters grievance*, February 24, 1982. O'Connor — 6 pages. (133)†

Temporary transfers to higher classification — entitled to higher rate only for days worked — five-day lag period applying only to permanent displacement from classification; grievance dismissed. *Re West Bend of Canada and U.S.W.A., Local 6105; Patterson grievance*, February 25, 1982. Brunner — 8 pages. (134)

Timing of wage increases for apprentices — ambiguity to be resolved in manner consistent with *Apprenticeship and Tradesmen's Qualification Act* and contract of apprenticeship; grievance dismissed. *Re Steelmaster Tool Company Ltd. and U.A.W., Local 195; McGuire grievance*, March 2, 1982. Samuels — 7 pages. (135)

#### Welfare Plans

Dental benefits above basic plan — "Plus 3 Rider" including benefits provided by first and second riders; grievance allowed. *Re Philips Electronics Ltd. and U.A.W., Local 27; policy grievance*, March 22, 1982. Palmer — 9 pages. (136)

Life insurance — "basic" annual salary to take into account retroactive salary increases; grievance adjourned. *Re Nepean, Corporation of City of, and Nepean Professional Fire Fighters' Association; Moodie Estate grievance*, February 25, 1982. Teplitsky — 5 pages. (137)

Retroactivity of sickness and accident benefits — payable based on hourly rate under new collective agreement; grievances allowed. *Re Sola Canada and I.A.M., Local 1168; Calamatta and Lismore grievances*, May 5, 1982. Beatty — 12 pages. (138)

Sick pay — doctor's charge for completing forms — intent to restrict "cost" to premiums; grievance dismissed. *Re H.J. Heinz Company of Canada Ltd. and U.F.C.W.U., Local P459; Gelderland grievance*, March 22, 1982. Majority: Burkett, Dinsdale; dissent: Saunders — 18 pages. (139)\*

Weekly indemnity — not entitled to increase where U.I.C. rate increased; grievance dismissed. *Re Certified Automotive Products (Central) Ltd. and U.S.W.A., Local 14831; Battaglia grievance*, February 26, 1982. Brent — 5 pages. (140)

Weekly indemnity benefits — grievor ill and unable to work prior to lay-off — entitled to benefits; grievance allowed. *Re Great West Timber Ltd. and Lumber and Sawmill Workers' Union, Local 2693; Gauthier grievance*, March 11, 1982. Majority: H.D. Brown, Bosnich; dissent: McNutt — 14 pages. (141)

#### Work Assignment

Assignment of mechanic to drive and pick up a truck for repair incidental to his repair work — no usurpation of work opportunity for driver classification; grievance dismissed.

*Re Canada Building Materials Company (Division of St. Mary's Cement Limited) and Teamsters, Local 880; Munro grievance*, May 17, 1982. Hinnegan — 8 pages. (142)†

Elimination of classification — employer having right to introduce technological changes — integrity of bargaining unit will not be impaired; grievance denied. *Re Domtar Packaging, Kraft Paper and Board Division, Red Rock Mill, and Canadian Paperworkers Union, Local 528; McGuire grievance*, May 7, 1982. Majority: Brunner, Byers; dissent: Stencer — 13 pages. (143)

Part-time employees performing work which should have been offered to full-time employees — company in breach of agreement; damages awarded to full-time employees. *Re Bittner Packers Ltd. and U.F.C.W.U., Local 1190-3; group grievance*, March 15, 1982. Betcherman — 8 pages. (144)†

Reduction of work force — not a direct result of transfer of work from one department to another terminal — partial closure procedure not applicable; grievance dismissed. *Re McKinlay Transport Limited and Teamsters, Local 938; group grievance*, May 14, 1982. Brent — 10 pages. (145)

Teaching hours in excess of twenty hours per week — no voluntary agreement to exceed maximum number of teaching hours; grievance allowed. *Re Conestoga College and O.P.S.E.U.; Barkley et al grievance*, May 25, 1982. Majority: Burkett, Warrian; dissent: Hallsworth — 11 pages. (146)

Tool crib attendants' positions removed from bargaining unit — company has rights to eliminate classifications; grievance dismissed. *Re Sheller-Globe of Canada Limited and U.A.W., Local 1285; policy grievance*, May 19, 1982. Egan — 5 pages. (147)

Vacation relief — improper assignment; grievance allowed. *Re Dow Chemical Canada Inc. and E.C.W.U., Local 672; union grievance*, March 10, 1982. Boscariol — 4 pages. (148)†

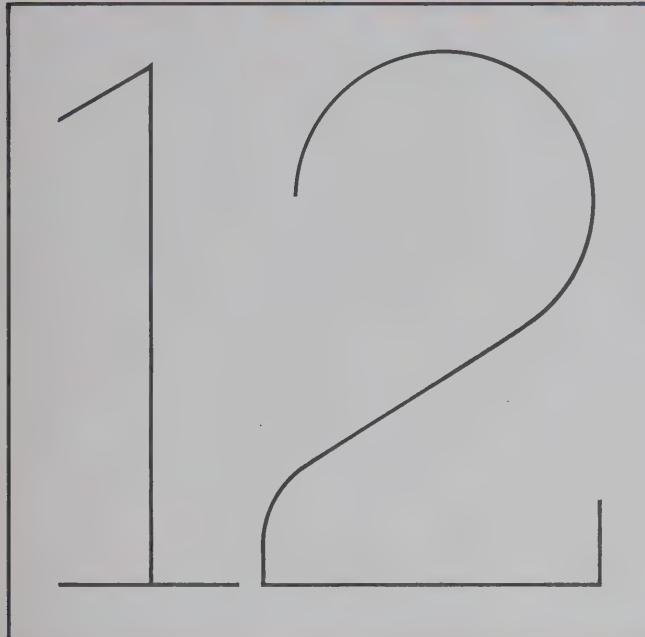
Volunteers performing some bargaining unit work — extended past practice — overlap incidental to volunteer function; grievance dismissed. *Re St. Joseph's Hospital, London, and London and District Service Workers' Union, Local 220; union grievance*, April 30, 1982. Majority: Adams, Coups; dissent in part: Robbins — 20 pages. (149)

Work assigned from other classification — collective agreement allows for changing and reclassifying jobs as well as assigning work outside tradesman's job description; grievance denied. *Re Denison Mines Ltd. and U.S.W.A.; Gofenko grievance*, March 23, 1982. Adams — 10 pages. (150)

Work outside job description assigned — grievance allowed. *Re Ex-Cell-O Corporation of Canada Ltd. and International Molders and Allied Workers Union, Local 49; Smith grievance*, March 2, 1982. Samuels — 4 pages. (151)

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# Monthly Bulletin



Ontario Ministry of Labour



Hon. Russell H. Ramsay, Minister  
T.E. Armstrong, QC, Deputy Minister

Office of Arbitration  
400 University Avenue, 6th Floor  
Toronto, Ontario  
M7A 1T7  
Tel. (416) 965-5669

Miss Jean M. Read, Director

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persons involved in labour-management  
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## Purchase of Awards

All awards listed in the *Monthly Bulletin* may be reviewed at the Office of Arbitration, 400 University Avenue, 6th Floor, Toronto, Ontario, M7A 1T7. Copies may be purchased for a fee of 50¢ per page and orders will be filled upon receipt of a request and a cheque or money order payable to the Treasurer of Ontario, for the applicable amount.

## Appointment of Arbitrators

Forms for requests for appointment of arbitrator under section 45 of *The Labour Relations Act* are available on request, from the Office of Arbitration.

## Grievance Arbitration

The following awards were filed with the Office of Arbitration during the month of June, 1982. The summary was prepared under the supervision of C.G. Simmons, B.A., B.C.L., LL.M.; D.D. Carter, B.A., B.C.L., LL.B. and K.P. Swan, P.Eng., LL.B.

\* Indicates award to be reported in full or in part in *Labour Arbitration Cases*.

† Indicates award issued under section 45 of *The Labour Relations Act*.

## Arbitrability

Damages for mental distress resulting from alleged theft — subject matter not within scope of collective agreement; grievance dismissed. *Re Canada Packers Inc. and U.F.C.W.U., Local 114-2P; Cooke grievance*, June 10, 1982. Kennedy, Lewis, Williamson — 13 pages. (1)\*

Delay of four and one-half years in filing grievance — delay unreasonable; grievance dismissed. *Re Air Canada and Canadian Air Line Flight Attendants' Association, Local 4; Keist grievance*, June 15, 1982. Hinnegan — 10 pages. (2)

Discharge of probationary employee — provision for exclusion of probationary employees from grievance procedure — specifically aimed at discharge cases; grievance not arbitrable. *Re Canadian National Institute for the Blind and Canadian Union of Blind and Sighted Merchants, Local 681; Haley grievance*, June 11, 1982. Black — 8 pages. (3)†

Disputed teaching assignment — matter arbitrable. *Re Georgian College and O.P.S.E.U.; White grievance*, June 25, 1982. Majority: O'Shea, Ziembra; dissent: Hallsworth — 23 pages. (4)

Employer's request for apology from employee — employer is proper initiator of discipline; grievance not arbitrable. *Re University of Ottawa and Association of Professors of University of Ottawa; employer grievance*, May 12, 1982. Majority: Palmer, Cromwell; dissent: Farr; addendum: Cromwell — 19 pages. (5)\*

Equitability of teaching assignment disputed — matter immediately arbitrable. *Re Fanshawe College and O.P.S.E.U.; Kuhn grievance*, June 21, 1982. Majority: O'Shea, McManus; dissent: Hatch — 20 pages. (6)

Settlement alleged — union officials having apparent authority to settle; preliminary objection allowed. *Re Etobicoke, Corporation of Borough of, and Etobicoke Professional Fire Fighters Association, Local 1137; general grievance*, May 26, 1982. Kennedy — 16 pages. (7)\*

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Registered nursing assistants referred by nursing registry — considered as employees of hospital; grievance allowed. *Re Sunnybrook Hospital and Sunnybrook Hospital Employees Union, Local 777; policy grievance*, June 10, 1982.

Majority: Gorsky, Beaulieu; dissent: Kort — 17 pages. (8)

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Power to rectify collective agreement — arbitrator having power to rectify; grievance dismissed. *Re Alcan Canada Products Limited, Muskoka Works, and Metal Foil Workers Union, Local 1663; group grievance*, June 17, 1982. Arthurs — 26 pages. (10)\*

Remedial jurisdiction — jurisdiction to remedy breaches of previous collective agreements. *Re Clarke Institute of Psychiatry and O.N.A.; Mahood grievance*, May 12, 1982. Majority: Beck, McIntyre; dissent — O'Byrne — 21 pages. (11)\*

#### Call Back

Casual part-time nurse — premium applicable only to regular employees; grievance dismissed. *Re Hotel Dieu Hospital and O.N.A.; Samson grievance*, May 11, 1982. Majority: Teplitsky, MacDermid; dissent: Gordon — 9 pages. (12)

#### Call-in Pay

Temporary work shortage caused by equipment failure — six to eight telephone calls by company over several hours on Sunday afternoon insufficient to be reasonable attempt to give advance notice; grievance allowed. *Re CAE-Montupet Diecast Limited and I.A.M.; Chaffe grievance*, June 22, 1982. Devlin — 7 pages. (13)†

#### Classification

Designation and pay for planning leader — work of grievors not shown to be properly characterized as that of "process planner" as outlined in collective agreement; grievances denied. *Re De Havilland Aircraft of Canada Limited and U.A.W., Local 673; Collim and Boyce grievances*, June 9, 1982. Palmer — 9 pages. (14)

Higher classification claimed — not within higher classification; grievance dismissed. *Re University of Toronto and C.U.P.E., Local 1230; Jackson grievance*, May 31, 1982. H. Brown, Cook, White — 33 pages. (15)

Higher classification claimed — work at higher level not established; grievance denied. *Re Cambrian College of Applied Arts and Technology and O.P.S.E.U.; Davis grievance*, June 28, 1982. Majority: Brent, Hallsworth; dissent: Millard — 10 pages. (16)

Job content changed — job description to be amended but wage rate to remain the same. *Re Fiberglas Canada Inc. (Sarnia Plant) and E.C.W.U., Local 914; group grievance*, June 8, 1982. Hinnegan — 19 pages. (17)

New classification claimed — not merely an addition of work of like difficulty to existing classification; grievance allowed. *Re Foodcorp Limited (Swiss Chalet Bar-B-Q), and Hotel, Restaurant and Cafeteria Employees Union, Local 75; Pommainville grievance*, June 7, 1982. Punnett, Tate, Ravet — 9 pages. (18)

New classification created by merging two existing positions — reorganization contrary to the express terms of collective agreement; grievance allowed. *Re Canada Starch Company Inc. and United Food Processors Union, Local 483; union grievance*, June 11, 1982. Hinnegan — 11 pages. (19)

#### Collective Agreement

Ancillary documents: letter of understanding; supplementary benefits booklet explaining terms and conditions of sickness and accident plan, terms of the plan and of insurance policy funding plan — held to have been incorporated by reference into collective agreement. *Re Falconbridge Nickel Mines Limited and Sudbury Mine, Mill and Smelter Workers' Union, Local 598; Brideau grievance*, May 13, 1982.

Majority: P. Picher, O'Neil; dissent: Valin — 60 pages. (20)

Retroactivity of disability benefit plan — specific provision for retroactivity for C.O.L.A. and pension clauses only; grievance dismissed. *Re Canadian Canners Limited #17 and U.F.C.W.U., Local 403; Bonacorso grievance*, October 7, 1981. Rose — 6 pages (21)†

#### Contracting Out

Construction work — such work not done by bargaining unit; grievance dismissed. *Re Lake Ontario Cement Limited and United Cement, Lime and Gypsum Workers' Union, Local 387; policy grievance*, June 18, 1982. Little — 22 pages. (22)†

Maintenance work — not established that work normally performed being sent out; grievances dismissed. *Re Thibodeau Finch Express Ltd. and Teamsters, Local 938; maintenance employees and Muise grievances*, April 12, 1982. Palmer, Linder, Petryshen — 9 pages. (23)

No specific restriction — *bona fide* subcontract for sound business reasons; grievance denied. *Re Craig Bit Company Limited and U.S.W.A., Local 8747; Winch et al grievance*, June 2, 1982. Brunner — 9 pages. (24)

#### Damages

Unjust discharge — appropriate measure of damages calculated. *Re Eddy, E.B., Forest Products Limited and Lumber and Sawmill Workers' Union, Local 2693; Delarosbil grievance*, June 18, 1982. Majority: O'Shea, Bosnich; dissent: Bernardo — 11 pages. (25)

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Deletion of charge — hand position, no reduction in work force — lay-off displacement provisions inapplicable; grievance dismissed. *Re Standard-Modern Technologies and U.S.W.A.; Faggiani grievance*, June 17, 1982. Linden — 9 pages. (26)

School closing; grievor lacking formal qualifications — employer's policy not a breach of collective agreement; grievance dismissed. *Re Niagara South Board of Education and Ontario Public School Men Teachers' Federation; Bradley grievance*, May 20, 1982. Kennedy, Lamb, Riddell — 22 pages. (27)

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Absence for three work days without notice to employer — parties treated termination as disciplinary; company practice not to insist on exact compliance; reinstatement without compensation. *Re New Structural Steel Limited and International Association of Bridge, Structural and Ornamental Iron Workers, Local 734; Richards grievance*, April 15, 1982. Palmer — 7 pages. (28)

Absence from work for more than two days without notifying hospital — collective agreement provided "deemed quit" in such circumstances; grievance dismissed. *Re Hotel-Dieu of St. Joseph of Diocese of London, Religious Hospitallers of, and S.E.U., Local 210; Van Kuren grievance*, June 15, 1982. Majority: Brunner, Bartlet; dissent: Libeskind — 17 pages. (29)

Absence prolonged — failure to produce medical certificate; grievance denied. *Re Hamilton Civic Hospitals and O.N.A.; Charles grievance*, June 7, 1982. Majority: Dunn, McKillop; dissent: Switzman — 10 pages. (30)

Absence without leave — not deliberate absenteeism for purposes of pursuing personal commercial gain; three-month suspension substituted for discharge. *Re Canadian General Electric Company Limited and U.E., Local 524; Hannah grievance*, June 23, 1982. Majority: Brunner, Russell; dissent: Byers — 13 pages. (31)

Absence without leave and insubordination: grievor left on vacation despite company's refusal of grievor's request — failure to report to work on date stated; poor past record and questionable medical evidence; grievance dismissed. *Re Dominion Dairies Limited and I.U.O.E., Local 796; Mahmood grievance*, June 18, 1982. Betcherman — 7 pages. (32)†

Absence without leave; personal problems — suspension of five months substituted by minutes of settlement. *Re Standard Tube Canada Limited and U.A.W., Local 636; Massicotte grievance*, June 2, 1982. R. Roberts — 9 pages. (33)

Absence unauthorized — grievor providing adequate explanation but failing to act responsibly; reinstatement without full pay. *Re Sunnybrook Hospital and Sunnybrook Hospital Employees' Union, Local 777; Triantafilou grievance*, May 31, 1982. Majority: Schiff, Beaulieu; dissent: Hatch — 8 pages. (34)

Absence unauthorized for three consecutive days — working for different employer — provision for loss of seniority for breach; grievance dismissed. *Re Auberges Richelieu International Ltd. and Hotel, Restaurant Employees Union, Local 743; Kelly grievance*, June 15, 1982. Verity — 19 pages. (35)†

Absenteeism — absenteeism excessive and incorrigible; requisite supporting medical evidence not provided; grievance dismissed. *Re Algoma Steel Corporation Limited and U.S.W.A., Local 2251; Obder grievance*, June 8, 1982. Majority: Hinnegan, Moran; dissent: Keck — 16 pages. (36)

Absenteeism — accident prone tendency of grievor corrigible; improved medical condition; conditional reinstatement. *Re Steel Company of Canada Ltd., Hilton Works, and U.S.W.A., Local 1005; Shand grievance*, June 25, 1982. Majority: R. Roberts, Marshall; dissent: Morin — 17 pages. (37)

Absenteeism — employee given adequate warning of possible discharge; grievance denied. *Re Atomic Energy of Canada Limited (Chalk River Nuclear Laboratories) and O.P.E.I.U., Local 404; Turcotte grievance*, May 30, 1982. Majority: Saltman, Healy; dissent: Kearney — 14 pages. (38)\*

Absenteeism — grievor reinstated by previous arbitration award on "last-chance" basis — within four months grievor absent and failed to produce medical evidence substantiating illness; grievance dismissed. *Re Stelco Inc., Hilton Works, and U.S.W.A., Local 1005; Toneguzzi grievance*, June 21, 1982. R. Roberts — 17 pages. (39)†

Alteration of grounds — employer now precluded from relying on grievor's past record. *Re Mississauga Transit and A.T.U., Local 1572; Ratcliffe grievance*, June 24, 1982. Devlin — 17 pages. (40)†

Assault on supervisor — no mitigating factors in incident — good work record not enough to justify reduction of penalty; grievance dismissed. *Re Duracon Industries Ltd. and Labourers' International Union, Local 183; Potter grievance*, June 23, 1982. O'Connor — 4 pages. (41)†

Criminal conviction — employer not precluded from discharging grievor pending outcome of appeal. *Re Mississauga Transit and A.T.U., Local 1572; Ratcliffe grievance*. See (40), *supra*. (42)†

Culminating incident — poor past record but insufficient for compliance with progressive discipline code — reinstatement without compensation. *Re Elan Tool and Die Limited and U.A.W., Local 127; Strain grievance*, April 8, 1982. Palmer — 12 pages. (43)

Culminating incident alleged — grievor with poor past record had fight with fellow member of bargaining unit — no injury; no flouting of company authority; reinstatement without compensation. *Re Greening Donald Co. Ltd. and U.S.W.A., Local 3325; Defoe grievance*, June 10, 1982. Majority: Saltman, Davis; dissent: Byers — 13 pages. (44)

Destruction and abandonment of mail — alcoholism aggravated by family problems — work record good; conditional re-instatement. *Re Canada Post Corporation and Letter Carriers' Union of Canada; Shier grievance*, June 10, 1982. Jolliffe — 23 pages. (45)

Dereliction of duty, discreditable conduct and consumption of alcohol while on duty alleged — conduct blameworthy but not as discreditable as alleged; suspension substituted. *Re Hamilton Harbour Commissioners and C.U.P.E.; Gaiger and Whyte grievances*, June 1, 1982. Gorsky, Wace, Gillen — 12 pages. (46)

Drunkenness and assault on another employee after notice of discharge; grievance dismissed. *Re Upper Lakes Shipping Limited and Canadian Merchant Service Guild; Power grievance*, June 7, 1982. H. Brown — 22 pages. (47)

Insubordination and leaving work without permission — grievor unlikely to change attitude; grievance dismissed.

*Re Windsor Board of Education and C.U.P.E., Local 27; Melnik grievance*, June 1, 1982. Adamson — 16 pages. (48)†

Insubordination; refusal to perform assigned work — specific penalty of summary dismissal stated in collective agreement — no risk to life, safety or health of grievor — no power to relieve; grievance dismissed. *Re Beatrice International (Canada) Limited and U.F.C.W.U., Local 417; Webb grievance*, June 25, 1982. Knopf — 14 pages. (49)†

Insubordination; refusal to wear safety equipment and refusal to leave company premises after ordered to do so — grievor under mental stress; reinstatement without compensation. *Re National Auto Radiator Mfg. Co. Ltd. and U.A.W., Local 195; Latouf grievance*, March 29, 1982. Rayner — 12 pages. (50)

Loss of bondability as a result of criminal conviction — grievor not handling large sums of money; inconsistent practice; suspension substituted. *Re Edwardsburgh, Corporation of Township of, and C.U.P.E., Local 2311-02; Laharie grievance*, May 27, 1982. Willes — 11 pages. (51)†

Punching time card of another employee — spur of the moment act — discriminatory discipline; three-week suspension substituted. *Re Swiss Chalet Employers' Association and Canadian Union of Restaurant and Related Employees; Marullo grievance*, May 26, 1982. Harries, Rusak, Castaldo — 20 pages. (52)

Quit alleged — grievor not required to personally communicate revocation to company; grievance allowed. *Re Clare Brothers Limited, Cambridge, and International Molders and Allied Workers Union, Local 194; Kingston grievance*, June 3, 1982. Palmer, Poskanzer, Werry — 7 pages. (53)

Section 61.5 of *Canada Labour Code* — seniority defined: previous award clarified. *Re Eastern Airlines Inc. and Mayhew*; June 14, 1982. H. Brown — 14 pages. (54)\*

Settlement — three-month suspension substituted. *Re University of Windsor and S.E.U., Local 210; Atherton grievances*, May 31, 1982. Brunner — 7 pages. (55)

Substandard work — caused by physical disability rather than careless workmanship; grievor put on lay-off status. *Re Almatex Limited and E.C.W.U., Local 834; Skrettas grievance*, May 28, 1982. O'Shea, Baldwin, Ison — 10 pages. (56)

Temporary summer student — decision to terminate not arbitrary, discriminatory nor in bad faith; grievance dismissed. *Re Labatt's Ontario Breweries, and National Brewery Workers' Union, Local 1; Gifford grievance*, June 3, 1982. McLaren — 19 pages. (57)\*

Theft — offence established; grievance dismissed. *Re Ford Motor Company of Canada Limited and U.A.W., Local 200; Zucchetti grievance*, May 17, 1982. Palmer — 8 pages. (58)

Theft of company property — long service and good record; three-month suspension to replace discharge. *Re Allied Chemical Canada, Ltd., Amherstburg, and U.A.W., Local 89; Duffy grievance*, May 20, 1982. Samuels — 11 pages. (59)

Absenteeism — progressive disciplinary practice not followed; grievance allowed. *Re Fleet Industries (Division of Ronyx Corporation Limited) and I.A.M., Lodge 171; LaFontaine grievance*, June 23, 1982. Brunner — 8 pages. (60)

Altercation with customer alleged — suspension reduced from seven to three days. *Re Bell Canada and Communications Workers of Canada; Beauchamp grievance*, June 17, 1982. Majority: Burkett, Filion; addendum: Beaulieu — 22 pages. (61)

Breach of personal appearance rule resulting in five-day suspension — union agreement to rule; inconsistent with progressive discipline; grievance allowed. *Re Mississauga Transit and A.T.U., Local 1572; Heath grievance*, June 29, 1982. Boscaroli — 12 pages. (62)†

Careless and unsafe act creating risk to safety of grievor, other employees and company property — suspension upheld; disqualification to be removed from discipline. *Re Canadian Carborundum Company Ltd. and U.S.W.A., Local 4151; Kane grievance*, June 1, 1982. Majority: Gorsky, McKerral; dissent: Urbanovics — 13 pages. (63)

Carelessness: failure to secure latch on truck door — previous record of carelessness; grievance dismissed. *Re Rantex Brushes Inc. and U.E., Local 542; Bruce grievance*, June 25, 1982. O'Connor — 4 pages. (64)†

Culminating incident — record of unexplained absences; grievance denied. *Re Dominion Stores Limited and U.S.W.A.; Graham grievance*, June 21, 1982. C. Brown — 8 pages. (65)

Damage to company property — damage not caused intentionally by grievor; reprimand to be substituted for two-week suspension. *Re Concrete Supplies of Windsor Inc. and Teamsters, Local 880; Finlay grievance*, June 16, 1982. MacDowell, Burnell, Laub — 13 pages. (66)

Distribution of protest leaflet — reprimand for false and misleading statements — exaggeration but not total falsity; grievance allowed. *Re Robertshaw Controls Canada Inc. and U.E., Local 512; Rappold grievance*, May 31, 1982. Egan — 9 pages. (67)\*†

Early departure on shift — employer not obligated to permit early departure; grievance denied. *Re Alcan Canada Foils, and Printing Specialties and Paper Products Union, Local 466; Murphy grievance*, April 20, 1982. Kennedy, Paulin, Geiger — 16 pages. (68)

Failure to report unfinished work — three-day suspension reduced to written warning. *Re Westank-Willock, Division of Willock Industries Ltd., and U.S.W.A., Local 8095; Watts grievance*, May 27, 1982. O'Shea — 13 pages. (69)

Falsification of time reporting alleged — not established; grievance allowed. *Re Bell Canada and Communications Workers of Canada; Beauchamp grievance*. See (61), *supra*. (70)

Fight with fellow employee — principle of equal treatment not offended by two-day suspension of grievor with poor past record; grievance dismissed. *Re Mount Sinai Hospital and S.E.U., Local 204; Morrison grievance*, June 24, 1982. Majority: Brent, Hatch; dissent: Ortlieb — 8 pages. (71)

Indefinite suspension for fabricating medical grounds to avoid transfer — indefinite duration inconsistent with just cause; definite suspension with conditions substituted. *Re Canadian Labour Congress and Canadian Labour Congress Representatives Union; Dollack grievance*, June 29, 1982. Davis — 30 pages. (72)†

Insubordination — conduct not serious enough to warrant ten-day suspension; suspension reduced to five days. *Re Alcan Canada Foils, and Printing Specialities and Paper Products Union, Local 466; Murphy grievance.* See (68), *supra*. (73)

Insubordination — grievor possessing good work record and some provocation for reaction; three-day suspension reduced to one day. *Re Rio Algoma Limited and U.S.W.A., Local 5417; Szwed grievance*, June 3, 1982. P. Picher — 9 pages. (74)

Insubordination — union official attending to union business despite foreman's instruction to return to work pending the arrangement of time off for a meeting; company procedure changed; suspension reduced to written warning. *Re Norton Canada Inc. and U.A.W., Local 397; Heather grievance*, May 31, 1982. Egan — 6 pages. (75)

Insubordination and altercation with foreman resulting in two-week suspension — isolated incident; sincere apology afterward; warning substituted. *Re Wabco Limited and U.E., Local 558; Pickup grievance*, May 31, 1982. Hearn — 13 pages. (76)†

Insubordination and insolence resulting in one-day suspension — insubordination not established; suspension reduced to written warning. *Re Niagara, Regional Municipality of, and C.U.P.E., Local 1287; Craine grievance*, June 11, 1982. R. Roberts — 10 pages. (77)†

Insubordination: argument with supervisor but no refusal of orders — good work record; written warning substituted for two-day suspension. *Re St. Mary's Hospital and London and District Service Workers' Union, Local 220; McGinnes grievance*, June 18, 1982. Majority: Swinton, Beaulieu; dissent: Dyer; addendum: Beaulieu — 14 pages. (78)

Insubordination; grievor refusing to accept work assignment — failed to produce credible medical evidence to support his leaving work; grievance dismissed. *Re Firestone Canada Inc. and United Rubber Workers of America; Cheeseman grievance*, June 22, 1982. O'Connor — 3 pages. (79)†

Insubordination: refusal to continue work assignment when request for training premium refused — "comply and grieve later" rule applied; grievance dismissed. *Re Consolidated-Bathurst Packaging Ltd. and International Woodworkers of America, Local 2-76; Phillips grievance*, June 8, 1982. Majority: Carter, Rogers; partial dissent: Ballantyne — 10 pages. (80)

Insubordination: refusal to perform assigned work — poor work record; grievance denied. *Re Inco Metals Company and U.S.W.A.; Chamberlain grievance*, June 17, 1982.

Majority: O'Shea, Pigott; dissent: Rouleau — 12 pages. (81)

Intermittent discipline — not necessarily inconsistent with reasonable cause; grievance dismissed. *Re London, Corporation of City of, and London and District Service Workers' Union, Local 220; policy grievance*, June 14, 1982. Palmer — 5 pages. (82)\*†

Intoxication alleged — not established on evidence; grievance allowed. *Re Steel Company of Canada Inc., Hilton Works, and U.S.W.A., Local 1005; Grant grievance*, June 14, 1982. Majority: Burkett, Marshall; dissent: Jarvis — 14 pages. (83)

Late return from dinner break — must return by end of break period — open defiance; grievances dismissed. *Re Inter-Forest Limited and International Woodworkers of America, Sub-local 2500; Wallis, Albright and others grievances*, June 2, 1982. Sheppard — 8 pages. (84)†

Lateness resulting in five-day suspension — poor punctuality record; company rules do not die with expiry of collective agreement; grievance dismissed. *Re Thunder Bay, Corporation of City of, and A.T.U., Local 966; Powers grievance*, June 14, 1982. Phillips — 9 pages. (85)

Leaving work early — patient care not jeopardized — grievor's work record good; five-day suspension reduced to two days. *Re Parkwood Hospital and London and District Service Workers Union, Local 220; Naraine grievance*, June 4, 1982. Majority: Gorsky, Coups; dissent: Beaulieu; addendum: Coups — 10 pages. (86)

Leaving work without permission — unusual overtime assignment changed; grievor entitled to refuse work but failed to inform management; ten-day suspension reduced to three days. *Re Air Canada and I.A.M., Lodge 148; McGee grievance*, June 2, 1982. Beatty — 12 pages. (87)

Leaving worksite without permission — concern for safe transportation unreasonable; grievances dismissed. *Re London, Corporation of City of, and London Civic Employees, Local 107; Brand and Butler grievances*, May 28, 1982. Verity — 12 pages. (88)†

Misconduct during legal strike resulting in suspension — suspensions not servable during strike — penalties in most part just; grievances dismissed in large part. *Re Ralston Purina Canada, Inc., and E.C.W.U., Local 41; Rayson, Pereira, et al grievances*, June 14, 1982. Davis — 41 pages. (89)†

Negligence in performance of maintenance work alleged — not proved; grievance allowed. *Re Marshall Gowland Manor (Corporation of City of Sarnia) and London and District Service Workers' Union, Local 220; Laanstra grievance*, June 1, 1982. Majority: R. Roberts, Beaulieu; dissent: Furlong — 14 pages. (90)

Picket-line conduct: thirty-day suspension for rock throwing on picket line — no denial from grievor; grievance dismissed. *Re Consumers' Distributing Company Limited and Teamsters Union, Local 419; Ali grievance*, June 1, 1982. Knopf — 18 pages. (91)†

Poor workmanship — insufficient evidence of discrimination; grievance dismissed. *Re Haley Industries Limited and U.S.W.A., Local 4820; Evans grievance*, June 2, 1982. D. Scott — 4 pages. (92)†

Unauthorized absence — suspension a reasonable discipline for misconduct; grievance denied. *Re Etobicoke, Corporation of Borough of, and Etobicoke Professional Fire Fighters' Association, Local 1137; Scott grievance*, June 2, 1982. Brunner — 11 pages. (93)

**Estoppel**

Acquiescence in practice of paying a certain group of employees sick pay during designated waiting period before benefits under sick plan payable — detrimental reliance by employees on the practice; grievance allowed. *Re CN/CP Telecommunications and Canadian Telecommunications Union; union grievance*, February 12, 1981. Beatty — 19 pages. (94)

**Grievance Procedure**

Specific provision against changing grounds of grievance — no waiver; issue not arbitrable. *Re Walkerton, Corporation of Town of, and I.U.O.E., Local 793; union grievance*, June 4, 1982. Majority: Barton, Adams; dissent: Duffy — 9 pages. (95)

Timeliness: continuing breach found — failure to initiate grievance at first opportunity within time limits does not render grievance inarbitrable but limits quantum of compensation payable; grievances allowed. *Re Algonquin College of Applied Arts and Technology and O.P.S.E.U.; Rudenko and Schnare grievances*, June 1, 1982. Brent, Shuttleworth, Cochrane — 10 pages. (96)

**Holiday Pay**

Holiday proclaimed for all but bargaining unit employees — entitlement dependent upon specific grant of holiday; grievance dismissed. *Re Walkerton, Corporation of Town of, and I.U.O.E., Local 793; union grievance*. See (95), *supra*. (97)

Payment for Civic Holiday postponed until Christmas period, as suggested by union — qualifying dates not meant to be postponed; grievance allowed. *Re Canadian Appliance Manufacturing Company Limited and U.S.W.A., Local 3129; group grievance*, June 17, 1982. Linden — 8 pages. (98)

Qualifying days — absence on compensation; grievance dismissed. *Re Honeywell Limited and U.A.W.; Crane grievance*, June 10, 1982. Majority: H. Brown, White; dissent: Bruce — 5 pages. (99)

Qualifying days — plant shutdown postpones qualifying day; grievance allowed. *Re Lake Ontario Steel Company Limited, Whitby, and U.S.W.A., Local 6571; group grievance*, June 16, 1982. Kates — 8 pages. (100)†

Qualifying period — lay-off occurring during this period; grievance denied. *Re Griffith Mine and U.S.W.A., Local 7020; group grievance*, June 14, 1982. Egan — 6 pages. (101)

**Hours of Work**

Ambulance attendants required to wear pager, remain on hospital premises and answer dispatches on lunch break — overtime payable; grievance allowed. *Re Cambridge Memorial Hospital and S.E.U., Local 204; group grievance*, June 8, 1982. Majority: Brent, Simon; dissent: Boehmer — 10 pages. (102)

Attendance at hospital after completion of shift — time at hospital for treatment not work in line of duty; grievances dismissed. *Re Metropolitan Board of Commissioners of Police and Metropolitan Police Association; Difede and Fotheringham grievances*, June 8, 1982. Palmer — 10 pages. (103)

**Illness**

Return to work — employer not obliged to provide light duty work; grievance dismissed. *Re Shell Canada Limited and E.C.W.U., Local 839; West grievance*, June 14, 1982. Weatherill — 6 pages. (104)

**Interest Arbitration**

Catch-up — provision of 6.5% catch-up factor. *Re University of Toronto and University of Toronto Faculty Association*; June 3, 1982. Burkett — 51 pages. (105)

**Job Posting**

Failure to post — appropriate measure of damages determined. *Re Sault Ste. Marie, Corporation of City of, and C.U.P.E., Local 67; Ferguson grievance*, May 19, 1982. Teplitsky, Kozak, Forbes — 3 pages. (106)

Lateral transfer for grievor — grievor eligible; grievance allowed. *Re Scarborough, Corporation of Borough of, and Scarborough Civic Employees' Union; Local 368, C.U.P.E.; Crawford grievance*, May 27, 1982. O'Shea — 14 pages. (107)

Public competition for vacancy improper until determination made that bargaining unit members not qualified; grievance allowed. *Re Simcoe County Board of Education and C.U.P.E., Local 1310; Grant grievance*, June 23, 1982. Knopf — 13 pages. (108)†

Setting of qualifications by management for vacancy of electronic technician neither unreasonable nor arbitrary; grievance dismissed. *Re Northern Telecom Canada Limited and U.A.W., Local 1839; union grievance*, June 18, 1982. O'Shea — 8 pages. (109)

Temporary vacancies excluded but posted; employer now bound to fill position according to collective agreement; grievance allowed. *Re Ontario Nurses' Association and O.N.A. Staff Union; Rose grievance*, May 31, 1982. Knopf — 24 pages. (110)†

**Job Vacancy**

Instructor's premium for unposted job — new work within ambit of present classification — no evidence of vacancy; grievance dismissed. *Re Inco Metals Company and U.S.W.A., Local 6500; Jones grievance*, June 21, 1982. Hinnegan, Gareau, Furlong — 11 pages. (111)

"Vacancy caused by termination" — vacancy not caused by termination; grievance dismissed. *Re Webster Manufacturing (London) Limited and International Molders' and Allied Workers' Union, Local 49 (London); Rotheram grievance*, March 26, 1982. Rayner — 8 pages. (112)

**Lay-off**

Bad faith and discrimination alleged — not established. *Re Guelph, Corporation of City of, and Guelph Professional Fire Fighters' Association, Local 467; Borghese, et al grievances*, June 2, 1982. Beatty — 15 pages. (113)\*

Bumping rights — grievor acquiesced in bump to wrong job — as part of settlement of separate policy grievance, grievor bumped to appropriate job and entitled to be paid accordingly; grievance allowed. *Re McDonnell Douglas Canada Ltd. and U.A.W., Local 673; Strange grievance*, May 20, 1982. Palmer — 7 pages. (114)

Bumping rights — grievor not immediately able to do required work; inventory only other available work not bargaining unit work; grievance dismissed. *Re Jaeger Machine Company of Canada Limited and Jaeger Employees Union; Donnelly grievance*, May 28, 1982. Barton — 7 pages. (115)

Extent of bumping rights — bargaining unit seniority inapplicable; Government Incentive Program not a factor in lay-offs; grievances dismissed. *Re Sandwich West, Corporation of Township of, and C.U.P.E., Local 701; Yoell and Serran grievances*, June 23, 1982. Verity — 11 pages. (116)†

Qualifications — grievor did not have required qualifications for transfer; grievance dismissed. *Re Otis Elevator Company Limited and U.S.W.A., Local 7062; Ellis grievance*, May 29, 1982. Davis — 18 pages. (117)†

Qualifications upon recall — grievor qualified; grievance allowed. *Re Miami-Carey and U.E., Local 542; Bloomberg grievance*, May 31, 1982. Devlin — 18 pages. (118)†

Workers sent home for balance of shift — bumping not possible; grievance dismissed. *Re Purity Packaging Limited and Canadian Paperworkers Union, Local 685; policy grievance*, June 2, 1982. Brunner — 14 pages. (119)\*

#### Leave of Absence

Special leave requested to return to Italy for death of nephew — evidence not demonstrating need for grievor's personal attention; grievance denied. *Re Carleton University and C.U.P.E., Local 910; Allogia grievance*, May 14, 1982. Majority: Bernstein, Lister; dissent: Kearney — 13 pages. (120)

#### Overtime

Allocation to off-shift mechanics before on-shift trainees — employer entitled to specify classification; grievance dismissed. *Re American Can Canada Inc. and Sheet Metal Workers' International Association, Local 487; Moyes grievance*, June 9, 1982. Black — 9 pages. (121)†

Distribution — work not regularly performed by grievor; grievance denied. *Re Honeywell Limited, Scarborough, and U.A.W., Local 80; McCrae grievance*, June 24, 1982.

Majority: Brent, White; dissent: Bruce — 6 pages. (122)

Distribution improper — lost overtime opportunity not replaced; grievance allowed. *Re Wood, John, Mfg. Ltd. and U.A.W.; Trantalouski grievance*, June 21, 1982. O'Shea — 9 pages. (123)

Distribution: overtime work assigned to employees outside group to whom such work normally would be distributed — compensation awarded; grievance allowed. *Re Falconbridge Nickel Mines Limited and Sudbury Mine, Mill and Smelter Workers' Union, Local 598; Rees grievance*, April 13, 1982. Majority: Palmer, Symes; dissent: Valin — 26 pages. (124)

Distribution to trainees — grievance allowed in part. *Re Denison Mines Limited and U.S.W.A.; Vance grievance*. See (9), *supra*. (125)\*

Inventory work — outside provisions of collective agreement; grievances dismissed. *Re Silverwood Dairies and C.U.O.E.; Harvey and Tesone grievances*, June 3, 1982. O'Connor — 5 pages. (126)†

#### Probationary Employees

Termination at end of last shift of probationary period — grievor still a probationer. *Re Canadian National Institute for the Blind and Canadian Union of Blind and Sighted Merchants, Local 681; Haley grievance*. See (3), *supra*. (127)

#### Procedure

Adjournment — granted to notify parties potentially affected by grievances of bumping caused by lay-off. *Re Alcan Canada Products Limited and U.S.W.A., Local 8754; Youden and Pittameglio grievances*, June 25, 1982. Knopf — 4 pages. (128)†

Adjournment — hearing adjourned *sine die* pending medical reference provided for in collective agreement where issue is medical fitness of employee to work. *Re Toronto Star Newspapers Ltd. and Southern Ontario Newspaper Guild; Faiola grievance*, June 23, 1982. Teplitsky — 5 pages. (129)

Adjournment of hearing of grievance concerning discharge granted pending disposition of criminal charges against grievor — adjournment granted upon terms. *Re Ottawa Civic Hospital and C.U.P.E., Local 576; Fleishmakher grievance*, interim award, May 31, 1982. D. Scott, Bentley, Beaulieu — 5 pages. (130)

Adjournment: principal witness unavailable — further hearing set and both parties to call relevant evidence on matter of adjournment. *Re Chedoke Hospitals, Hamilton, and O.P.S.E.U.; Herczeg grievance*, May 26, 1982. Saltman; dissents: Noonan, Cochrane — 3 pages. (131)

Conditional reinstatement requested because of lengthy adjournment period due to unavailability of a principal witness — board not empowered to do so; grievance denied. *Re Chedoke Hospitals, Hamilton, and O.P.S.E.U.; Herczeg grievance*, June 14, 1982. Majority: Saltman, Noonan; dissent: Cochrane — 4 pages. (132)

Costs at arbitration hearing — statute and collective agreement provide for equal sharing; no circumstances justifying departure from this rule. *Re Kingston, Corporation of City of, and C.U.P.E., Local 141; Cornwall grievances*, June 8, 1982. Little — 9 pages. (133)†

Production of documents — no power to direct production. *Re Guelph, Corporation of City of, and Guelph Professional Fire Fighters' Association, Local 467; Borghese, et al grievances*. See (113), *supra*. (134)\*

#### Sick Leave

Care of child — care of twenty-seven year old daughter covered by provision for care of child; grievance allowed. *Re York University and York University Staff Association; Walters grievance*, June 3, 1982. Devlin — 11 pages. (135)†

Pregnancies made heavy lifting impossible — no light-duty vacancies; entitlement dependent upon total disability; grievances dismissed. *Re International Harvester Company of Canada Limited and U.A.W., Local 127; unnamed grievances*, May 26, 1982. Teplitsky — 5 pages. (136)

#### Transfer

Qualifications — company found to have thoroughly considered grievor's qualifications; grievance denied. *Re O & K Orenstein and Koppel Canada Limited and I.A.M., Local 1740; Willet grievance*, June 7, 1982. Majority: Dunn, Paulin; dissent: Carter — 7 pages. (137)

**Wages**

Cost of living allowance — grievor ceasing employment before payment of C.O.L.A.; C.O.L.A. an earned payment for all hours worked; grievance allowed, with interest. *Re Canadian Canners Limited, Plant #51, and U.F.C.W.U., Local P596; Groot grievance*, June 9, 1982. Majority: Palmer, Lewis; dissent: Simpson — 9 pages. (138)\*

Red-circling — special rate bargained by union; red-circling improper; grievance allowed. *Re Clarke Institute of Psychiatry and O.N.A.; Mahood grievance*. See (11), *supra*. (139)

**Welfare Plans**

Disability pension — total and permanent disability payable when employee unable to meet requirements for any job in bargaining unit; grievance allowed. *Re Goodyear Canada Inc. and United Rubber Workers of America, Local 232; MacLeod grievance*, May 26, 1982. Kennedy — 13 pages. (140)

Employer liability — company contracted to provide benefit, not just insurance; grievance arbitrable. *Re Falconbridge Nickel Mines Limited and Sudbury Mine, Mill & Smelter Workers' Union, Local 598; Brideau grievance*. See (20), *supra*. (141)

Sick leave credit — grievor transferred from one employer to another, each having significantly different sick leave plans — grievor given full credit for sick leave by both employers; grievance dismissed. *Re Brampton Hydro Electric Commission and Local 636, I.B.E.W.; Brazier grievance*, May 31, 1982. Majority: Beck, Eames; dissent: Cavalluzzo — 12 pages. (142)

**Work Assignment**

Home room duties — teachers required to perform duties separate from teaching; grievance dismissed. *Re Bruce County Board of Education and Ontario Secondary School Teachers' Federation, District 44; union grievance*, May 5, 1982. Palmer, Cazabon, Merritt — 13 pages. (143)

"On call" work — employer having broad discretion in assigning work; grievance dismissed. *Re Bruce County Board of Education and Ontario Secondary School Teachers' Federation, District 44; union grievance*. See (143), *supra*. (144)

Permanent teacher having work load and salary unilaterally reduced from full-time to half-time — reduction in work load must be done with consent of employee; grievance allowed. *Re Cochrane-Iroquois Falls Board of Education and Branch Affiliates of O.S.S.T.F., etc.; Bussieres grievance*, June 2, 1982. Majority: Brunner, Vene; dissent: Valin — 23 pages. (145)

Supervisors performing work while grievors on lay-off — part of work normally and regularly performed by the supervisors; grievance dismissed. *Re Susan Shoe Industries, Fortune Footwear Division, and United Textile Workers of America, Local 369; group grievance*, June 21, 1982.

Majority: Hinnegan, Tarasuk; dissent: Bosnich — 7 pages. (146)

Teaching assignments in excess of required amount; grievance allowed. *Re Bruce County Board of Education and Ontario Secondary School Teachers' Federation, District 44; union grievance*. See (143, 144), *supra*. (147)

Time table cycle — employer not required to implement same time table cycle in all its schools; grievance denied. *Re Bruce County Board of Education and Ontario Secondary School Teachers' Federation, District 44; union grievance*. See (143, 144, 147), *supra*. (148)

Unassigned periods — designation of unassigned periods must be done in accordance with collective agreement; grievance allowed. *Re Bruce County Board of Education and Ontario Secondary School Teachers' Federation, District 44; union grievance*. See (143, 144, 147, 148), *supra*. (149)

**The Hospital Labour Disputes Arbitration Act**

The following interest arbitration awards under *The Hospital Labour Disputes Arbitration Act* were filed with the Office of Arbitration during the months of May and June, 1982.

*Belleville General Hospital and S.E.I.U., Local 663 (office and clerical)*. Saltman, Kort, Lewis; addendum: Lewis — 6 pages.

*Belleville General Hospital and S.E.I.U., Local 663 (technical unit)*. Majority: Barton, Lewis; dissent: Kort — 12 pages.

*Brantwood Manor Nursing Home and C.U.P.E., Local 1712*. Rubenstein, Robbins, Kerr — 10 pages.

*Brookhaven Nursing Home and S.E.U., Local 210*. M. Picher, Valin, Lewis; addenda: Valin, Lewis — 18 pages.

*Cornwall General Hospital and Hotel Dieu Hospital and O.P.S.E.U., Local 402 (technologists)*. Majority: Saltman, Demalpas; dissent: Budd — 10 pages.

*Hawkesbury and District General Hospital and O.P.S.E.U.* Ladd, Sargeant, Beaulieu — 11 pages.

*Laurier Manor Limited and Union of Laurier Manor Limited Employees (Ottawa)*. Bernstein, Brisbin, Curtis; addendum: Curtis — 12 pages.

*Leisure World Nursing Homes Limited and S.E.U., Local 478*. Majority: Betcherman, Bounsal; dissent: McGowan; addendum to follow: Bounsal — 9 pages.

*Participating Hospitals (Local Issues) and O.N.A.* V. E. Scott; partial dissents: Filion, Switzman — 27 pages.

*Participating Nursing Homes (7-Extendicare et al) and S.E.I.U. and London and District Service Workers Union*. Adams, Sargeant, Lewis; addendum to follow: Lewis — 57 pages.

*Royal Ottawa Hospital and C.U.P.E., Local 1976*. Majority: Saltman, Robbins; dissent to follow: O'Byrne; addendum: Robbins — 13 pages.

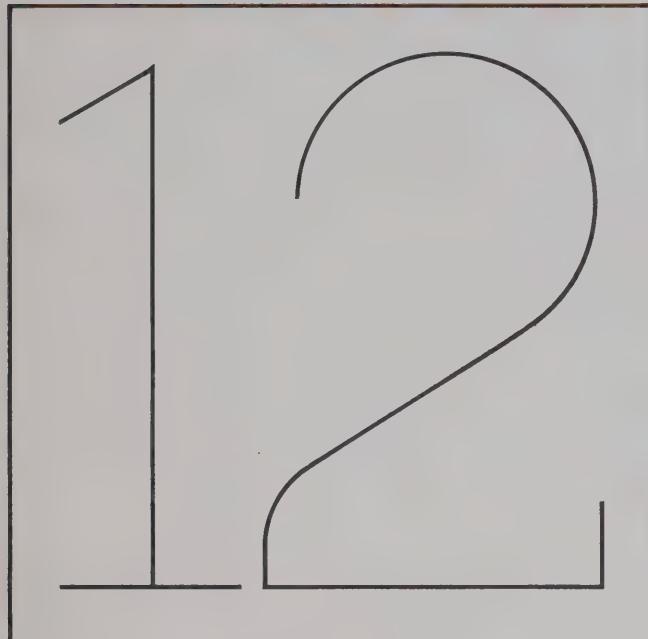
*St. Patrick's Home of Ottawa and C.U.P.E., Local 2437*. Saltman, Harnden, Switzman; addendum: Harnden; addendum to follow: Switzman — 25 pages.

*Sunbeam Home and O.N.A.* Saltman, Sanderson, Mayne; addendum: Mayne — 30 pages.

*Windsor Hospitals (Hotel Dieu, Metropolitan, Grace, Windsor Western) and S.E.U., Local 210*. Betcherman, Burnell, Lewis; addendum: Lewis — 15 pages.

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# Monthly Bulletin



Ontario Ministry of Labour



Hon. Russell H. Ramsay, Minister  
T.E. Armstrong, QC, Deputy Minister

Office of Arbitration  
400 University Avenue, 6th Floor  
Toronto, Ontario  
M7A 1T7  
Tel. (416) 965-5669

Miss Jean M. Read, Director

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## Purchase of Awards

All awards listed in the *Monthly Bulletin* may be reviewed at the Office of Arbitration, 400 University Avenue, 6th Floor, Toronto, Ontario, M7A 1T7. Copies may be purchased for a fee of 50¢ per page and orders will be filled upon receipt of a request and a cheque or money order payable to the Treasurer of Ontario, for the applicable amount.

## Appointment of Arbitrators

Forms for requests for appointment of arbitrator under section 45 of *The Labour Relations Act* are available on request, from the Office of Arbitration.

## Approved Arbitrators

The following people have been added to the Minister of Labour's panel of approved arbitrators:

His Honour Chief Judge H.T.G. Andrews, Provincial Courts (Family Division), 700 Bay Street, Suite 2306, Toronto, Ontario, M5G 1Z6; telephone (416) 965-3214.

The Honourable H. Carl Goldenberg, Q.C., Dominion Square Building, 1010 St. Catherine Street West, Suite 804, Montreal, Quebec, H3B 3R5; telephone (514) 866-7851.

Professor Brian A. Langille, Faculty of Law, University of Toronto, 78 Queen's Park Crescent, Toronto, Ontario, M5S 1A1; telephone (416) 978-4907.

## Grievance Arbitration

The following awards were filed with the Office of Arbitration during the months of June and July, 1982. The summary was prepared under the supervision of C.G. Simmons, B.A., B.C.L., LL.M.; D.D. Carter, B.A., B.C.L., LL.B. and K.P. Swan, P. Eng., LL.B.

\* Indicates award to be reported in full or in part in *Labour Arbitration Cases*.

† Indicates award issued under section 45 of *The Labour Act*.

## Arbitrability

Issue estoppel — issue raised in previous grievance; issue not arbitrable. *Re Algoma Steel Corporation & U.S.W.A., Loc. 2251; Lacasse grievance*, July 23, 1982. H. Brown, Morley, Gurevitch — 9 pages. (1)\*

Scope of grievance: alteration of grounds alleged — issue essentially the same; adjournment granted. *Re De Havilland Aircraft of Canada Limited & U.A.W., Loc. 112; Pauls et al grievance*, July 9, 1982. Gorsky — 10 pages. (2)

Successor rights agreement applies to present employer — grievance timely; grievance arbitrable. *Re White Die Castings Company Limited & U.S.W.A., Loc. 4153; Aggarwal grievance*, July 26, 1982. Hearn — 8 pages. (3)†

**Bargaining Unit**

Bio-medical technicians and position of supervisor of bio-medical electronics — within technical personnel exclusion — distinguishable from bargaining unit being service unit; grievance dismissed. *Re Sarnia General Hospital & London and District Service Workers' Union, Loc. 220; union grievance*, June 21, 1982. Majority: Palmer, McNaughton; dissent: Beaulieu — 16 pages. (4)

Enterostomal therapist position established — included in bargaining unit; grievance allowed. *Re Ottawa General Hospital & O.N.A.; union grievance*, July 15, 1982. Majority: Swan, McIntyre; dissent: Stansel — 17 pages. (5)

Lab technicians — "community of interest" demonstrated between lab and production floor; grievance allowed.

*Re Noranda Metal Industries Limited Fergus Division & I.B.E.W., Loc. 2345; union grievance*, July 19, 1982.

Jolliffe — 22 pages. (6)†

New classification — inclusion guaranteed by collective agreement; grievance allowed. *Re Thunder Bay, Corporation of City of, & C.U.P.E., Loc. 87; union grievance*, July 16, 1982. Rubenstein — 14 pages. (7)†

**Bereavement Pay**

Attendance at funeral of grandchild of common-law husband — natural grandmother of deceased continued to function as grandmother; grievance dismissed. *Re Accurcast Die Casting Limited & International Molders' and Allied Workers' Union, Loc. 93; King grievance*, July 16, 1982. Samuels — 7 pages. (8)

**Classification**

Alteration of duties — evidence not proving creation of a new position; grievance denied. *Re Haliburton, Kawartha, Pine Ridge District Health Unit & O.N.A.; policy grievance*, July 12, 1982. Majority: Linden, Tarasuk; dissent: McIntyre — 17 pages. (9)

Higher classification claimed — not performing work of classification claimed; grievance dismissed. *Re Hamilton Board of Education & C.U.P.E., Loc. 1344; union grievance*, July 5, 1982. Majority: Weatherill, McKillop; dissent: Marshall — 10 pages. (10)

Higher classification claimed — performance of same functions — established on evidence for only one grievor; Madigan grievance allowed; Cummings, McCullough, Balodis, Allen and Sinclair grievances dismissed. *Re Scarborough General Hospital & O.N.A.; Madigan, Cummings, McCullough, Balodis, Allen and Sinclair grievances*, June 29, 1982. Saltman; dissents: Kitchen, Robbins — 17 pages. (11)

Maintenance helper classification equivalent to different classification in previous agreement — job function not upgraded; grievance dismissed. *Re Accurcast Die Casting Limited & International Molders' and Allied Workers' Union, Loc. 93; Mohr grievance*, July 2, 1982. Betcherman — 6 pages. (12)

**Clothing Allowance**

Allowance for shoes for paint shop personnel contained in letter of intent — collective agreement provided for contribution by company for acquisition of protective footwear — both payable — no pyramiding; grievance allowed. *Re De Havilland Aircraft of Canada Ltd. & U.A.W., Loc. 112; policy grievance*, June 22, 1982. Palmer — 6 pages. (13)

**Collective Agreement**

Retroactivity — no obligation to pay holiday pay on basis of retroactivity under terms of present collective agreement; grievance denied. *Re Wabco Ltd. & U.E., Loc. 558; policy grievance*, July 2, 1982. Egan — 7 pages. (14)†

**Damages**

Mitigation — reasonable diligence in pursuing employment before award — interest awarded. *Re Mohawk College of Applied Arts and Technology & O.P.S.E.U.; Arora grievance*, June 30, 1982. H. Brown — 22 pages. (15)\*

**Demotion**

Driving record poor — grievor to be reinstated without compensation as long distance driver upon completion of defensive driving course. *Re Indalloy Division of Indal Limited & U.S.W.A., Loc. 2729; Moorehead grievance*, June 21, 1982. Majority: O'Shea, Smeenk; dissent to follow: MacKenzie — 14 pages. (16)

Work performance poor and absenteeism — disciplinary demotion for limited time period appropriate; grievance allowed. *Re Whitby Boat Works Limited & United Brotherhood of Carpenters and Joiners of America, Loc. 2679; Pettes grievance*, July 6, 1982. Majority: McLaren, Manson; dissent: Billings — 13 pages. (17)\*

**Discharge**

Absence caused by long-term disability — grievor entitled to twenty-four months absence before termination; reinstatement on seniority list. *Re White Die Castings Company Limited & U.S.W.A., Loc. 4153; Aggarwal grievance*. See (3), *supra*. (18)†

Absence from work without leave; refusal to perform assigned tasks established — no intention to mislead re falsification of time card; suspension substituted. *Re Rothsay Concentrates Company & E.C.W.U., Loc. 39; Gibson grievance*, July 14, 1982. Gorsky — 6 pages. (19)

Absence without leave of fourteen days causing loss of seniority — grievor thereby having no right to challenge discharge; grievance dismissed. *Re Rio Algom Limited & U.S.W.A.; Steinke grievance*, June 28, 1982. O'Shea — 14 pages. (20)\*

Absent without leave — reasons for absence not satisfactory to employer; grievance denied. *Re Guelph General Hospital & C.U.P.E., Loc. 57; McLean grievance*, July 27, 1982. Saltman — 23 pages. (21)\*

Absenteeism — failure to impress grievor with seriousness of record — good worker; reinstatement without compensation. *Re Scarborough, Corporation of Borough of, & C.U.P.E., Loc. 545; Lock grievance*, July 27, 1982. Samuels — 9 pages. (22)†

Absenteeism — grievor breached terms of agreement which allowed reinstatement in settlement of previous discharge grievance — claim for weekly indemnity benefits payable to date of discharge; grievance dismissed. *Re Milrod Metal Products & U.A.W., Loc. 252; Basran grievance*, July 5, 1982. Weatherill — 8 pages. (23)

Absenteeism — grievor not likely to improve attendance; grievance dismissed. *Re Massey-Ferguson Industries Limited & U.A.W., Loc. 439; Clawley grievance*, July 8, 1982. Barton — 7 pages. (24)

Assault on another employee — victim attempting to carry out proper management orders; grievor not credible; grievance dismissed. *Re WMI Waste Management of Canada Inc. & Teamsters, Loc. 419; Kean grievance*, June 29, 1982. O'Shea — 15 pages. (25)†

Culminating incident — company failing to establish basis for discipline; grievance allowed. *Re General Motors of Canada Limited & U.A.W., Loc. 303; Snyder grievance*, June 6, 1982. Palmer — 13 pages. (26)

Culminating incident: absence from work without leave — absenteeism record, disinterest in work; grievance dismissed. *Re Stelco Inc. Hilton Works & U.S.W.A., Loc. 1005; McKelvie grievance*, July 21, 1982. Majority: R.J. Roberts, Morley; dissent: Marshall — 15 pages. (27)

Culminating incident: obstruction of production — poor disciplinary record; grievance dismissed. *Re Lever Detergents Limited & Teamsters, Loc. 132; Kienapple grievance*, July 2, 1982. Palmer — 22 pages. (28)

Damage to company property — exposing fellow employees to risk of serious physical harm; grievance denied. *Re Windsor, Corporation of City of, & Windsor Municipal Employees, Loc. 82, C.U.P.E.; Ryan grievance*, June 29, 1982. Weatherill, Burnell, Bounslall — 9 pages. (29)

Fighting with fellow employee — aggressor throughout incident; unprovoked and severe assault; grievance dismissed. *Re Conship Limited & Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees, Loc. 1255; Spring grievance*, June 30, 1982. Adams — 10 pages. (30)

Fraudulent misrepresentation alleged — grievor claiming sickness and accident benefits in the absence of real injuries which would preclude him from carrying out normal duties — established on evidence; grievance denied. *Re Massey-Ferguson Industries Limited & U.A.W.; Boodhan grievance*, June 30, 1982. Gorsky — 12 pages. (31)

Inability to perform job to which employee transferred as result of work shortage — no work available for which grievor qualified; lay-off proper; grievance allowed in part. *Re Unitog Canada Ltd. & Textile Processors, Service Trades, Health Care, Professional and Technical Employees' Union, Loc. 357; Rawat grievance*, July 29, 1982. Majority: Howe, Wolfenden; dissent: Simon — 39 pages. (32)

Insubordination — no prior misconduct on record — two-week penalty substituted for discharge. *Re Lanark Sheet Metal Works Ltd. & U.S.W.A.; Mastrangelo grievance*, July 12, 1982. Linden — 6 pages. (33)

Insubordination and wilful damage to company property alleged — abusive language and insolence to supervisor established on evidence; discharge reduced to ten-day suspension. *Re General Bakeries Limited & Bakery and Confectionery Workers' Union, Loc. 264; Smith grievance*, July 8, 1982. Majority: H. Brown, Chmielewski; dissent: Redford — 11 pages. (34)

Insubordination; refusal to perform assigned work — no warning, no past discipline record; reinstatement without compensation. *Re Roper Canada Limited & U.S.W.A., Loc. 7978; Douglas grievance*, July 30, 1982. Baum — 7 pages. (35)

Insubordination: series of altercation with foreman — momentary flare-up; reinstatement without compensation. *Re Certified Automotive Products (Central) Limited & U.S.W.A., Loc. 14831; Luckhoo grievance*, July 5, 1982. Kennedy — 18 pages. (36)

Lateness and absenteeism — significant improvement after final warning; reinstatement without compensation. *Re Domkraft Limited & R.W.D.S.U., Loc. 414; Vivian grievance*, July 13, 1982. Devlin — 19 pages. (37)†

Lateness for work — progressive discipline applied — method of recording lateness not shown to be unfair; grievance dismissed. *Re De Havilland Aircraft of Canada Ltd. & U.A.W., Loc. 112; Kitching grievance*, June 22, 1982. Palmer — 6 pages. (38)

Leaving work without punching out — receiving pay to which he was not entitled; grievance denied. *Re Federal Pioneer Limited & U.E., Loc. 521; Hannides grievance*, July 7, 1982. Weatherill — 7 pages. (39)

Negligence: grievor's conduct contributing factor in truck accident; suspension without pay substituted. *Re Premier Concrete Products (Division of Lake Ontario Cement Limited) & Teamsters, Loc. 230; Grant grievance*, July 9, 1982. Majority: Black, Robbins; dissent: McKeown; addendum: Robbins — 10 pages. (40)

Quit alleged — two grievors' tendered resignations an admission of theft; allegations not established against third grievor; Wilson and Simms grievances dismissed; Kish grievance allowed. *Re Kelsey-Hayes Canada Limited & U.A.W., Loc. 636; Wilson, Simms and Kish grievances*, June 30, 1982. Palmer — 11 pages. (41)

Receiving information from medical record — disciplinary record reasonable; one-month suspension substituted for discharge. *Re St. Joseph's Hospital, London, & London and District Service Workers' Union, Loc. 220; Gilpin grievance*, July 8, 1982. Majority: Black, Mustard; dissent: Beaulieu — 19 pages. (42)

Sale of a business — new employer bound by previously negotiated collective agreement; grievance allowed. *Re John Lester Drugs Ltd. & Retail, Commercial and Industrial Union, Loc. 206; Litster et al grievance*, July 5, 1982. Jolliffe — 50 pages. (43)†

Theft — good work record and admission of wrong-doing; suspension substituted for discharge. *Re Ottawa Civic Hospital & C.U.P.E., Loc. 576; Dennis grievance*, June 29, 1982. McCaughey — 8 pages. (44)†

Work performance and attitude — company contributed to incompatibility of grievor — damages awarded in lieu of reinstatement. *Re Ontario Hydro & C.U.P.E., Loc. 1000; Siebert grievance*, June 15, 1982. Majority: McLaren, Nabi; partial dissent: Simpson — 50 pages. (45)

Wilful damage to company property — culminating incident — lengthy disciplinary record; grievance dismissed. *Re Square D Canada Electrical Equipment Inc., Port Colborne, & U.S.W.A., Loc. 9075; Manley grievance*, July 6, 1982. R.J. Roberts — 11 pages. (46)†

Work performance: habitual incompleteness of work and dereliction of duties — grievor resolved to improve his record; reinstatement without compensation. *Re Whitby, Corporation of Town of, & C.U.P.E., Loc. 53; Burns grievance*, July 8, 1982. Egan — 8 pages. (47)†

**Discipline**

Absence without leave alleged — contradictory testimony — neither version preferable — company failure to meet onus; grievance allowed. *Re Allied Chemical Canada Ltd. & U.A.W.*, Loc. 89; *Hurst grievance*, June 14, 1982. Palmer — 8 pages. (48)

Alteration of grounds alleged — oral information given to grievors does not restrict company's evidence; written disciplinary reports defining grounds for discipline. *Re Steel Company of Canada Ltd. & U.S.W.A.*, Loc. 1005; *Booth, Hamm et al grievances*, July 26, 1982. O'Shea — 13 pages. (49)†

Breach of time-keeping procedure resulting in deduction of one-half hour's pay; grievance dismissed. *Re Stelco Inc., Hilton Works, & U.S.W.A.*, Loc. 1005; *Goodwill grievance*, July 22, 1982. Kates — 8 pages. (50)†

Carelessness resulting in injury to fellow employee and damage to company property — discipline appropriate; grievance denied. *Re Highway Trailers of Canada Ltd. & International Molders and Allied Workers Union*, Loc. 28; *Siskos grievance*, July 9, 1982. R.J. Roberts — 15 pages. (51)

Carelessness resulting in one-day suspension — failure to use reasonable care; grievance dismissed. *Re Air Canada & I.A.M.*, Lodge 148; *Chlebak grievance*, July 6, 1982. Brunner — 8 pages. (52)

Consumption and possession of alcoholic beverages while on duty — established; grievances dismissed. *Re Toronto, Municipality of Metropolitan, & Metropolitan Toronto Civic Employees' Union*, Loc. 43; *Anderson and Howard grievances*, June 30, 1982. Majority: Schiff, Storie; dissent: Tate — 11 pages. (53)

Failure to notify of absence — grievor's wife did notify; grievance allowed. *Re Coca-Cola Limited & Soft Drink Workers Joint Local Executive Board*; *Murphy grievance*, June 23, 1982. Weatherill — 7 pages. (54)

Faulty workmanship — supervisor's investigation not thorough — failure to meet onus; grievance allowed. *Re S.A. Armstrong Limited & U.S.W.A.*, Loc. 6917; *Crawford grievance*, July 28, 1982. Kruger — 4 pages. (55)†

Insubordination and participation in illegal walk-out — no previous record of discipline; suspensions reduced. *Re Consolidated-Bathurst Packaging Limited, Whitby, & International Woodworkers of America*, Loc. 2-242; *Stacey and Hettle grievances*, May 21, 1982. Majority: Saltman; partial dissent: Rogers; dissent: Surdykowski — 34 pages. (56)

Insubordination: disrespectful letter resulting in one-day suspension — pattern of insolence; grievance dismissed. *Re Macdonalds Consolidated Limited & Teamsters*, Loc. 419; *Dairou grievance*, June 28, 1982. Majority: H. Brown, Storie; dissent: Stewart — 29 pages. (57)

Insubordination alleged — not established; grievance allowed. *Re Toronto, Municipality of Metropolitan, & Metropolitan Toronto Civic Employees Union*, Loc. 43; *Walsh grievance*, July 6, 1982. Majority: Samuels, Tate; dissent: Perron — 18 pages. (58)

Insubordination: refusal to allow nurse's evaluation before leaving work — evaluation well-established practice; grievance dismissed. *Re Women's Christian Association of London (Parkwood Hospital and McCormick Home) & London and District Service Workers' Union*, Loc. 220; *Kenney grievance*, July 13, 1982. Majority: Verity, Heffernan; dissent: Beaulieu — 12 pages. (59)

Insubordination: refusal to obey order to work overtime in an emergency; grievances denied. *Re General Bakeries Limited (Wonder Bread Division) & Retail, Wholesale, Bakery and Confectionery Workers' Union*, Loc. 461; *Salisbury and Nichols grievances*, July 7, 1982. Majority: Saltman, Redford; dissent: Reekie — 7 pages. (60)

Insubordination: refusal to work overtime during an emergency — corporation employing outside workers during emergency in the past; infraction slip for all but one grievor to remain on record and suspension eliminated. *Re Timmins Corporation of City of, & C.U.P.E.*, Loc. 210; *Henry et al grievances*, July 7, 1982. Dunn, Rukavina, DeGurse — 5 pages. (61)

Insubordination alleged — not established; grievance allowed. *Re Rest Haven Nursing Home of St. Williams 1974 Limited & London and District Service Workers' Union*, Loc. 220; *Bishop grievance*, July 26, 1982. Saltman, Humphrey, Robbins — 5 pages. (62)

Intoxication at work — poor past record; grievance dismissed. *Re Parkwood Hospital and McCormick Home & London and District Service Workers Union*, Loc. 220; *Zarski grievance*, July 19, 1982. Majority: Brunner, Heffernan; dissent: Robbins — 6 pages. (63)

Insubordination resulting in cancellation of two duty days plus three days suspension — mistaken belief regarding rights; grievor entitled to notice of exact extent of discipline; written warning substituted for suspension. *Re Belleville General Hospital & S.E.I.U.*, Loc. 183; *Gulliver grievance*, July 14, 1982. Majority: Carter, Lawlor; dissent: Budd; addendum: Lawlor — 14 pages. (64)

Letter on grievor's file — letter said to be not disciplinary and not involving stain on grievor's record, according to employer; grievance denied. *Re Brantford Board of Park Management and Recreation Commission & Brantford Civic Employees' Union*, Loc. 181, C.U.P.E.; *Chadwick grievance*, July 14, 1982. Samuels — 8 pages. (65)†

Loss of service keys resulting in suspension for two days — chance happening, limited English meant grievor did not understand rule; grievance allowed. *Re York Condominium Corporation No. 76 & Labourers' International Union*, Loc. 183; *Marchese grievance*, July 9, 1982. Adamson — 15 pages. (66)†

Mistreatment of patient alleged by hearsay evidence — not established; grievance allowed. *Re Sudbury Nursing Home Limited & C.U.P.E.*, Loc. 1182; *Lamarche grievance*, July 21, 1982. Majority: Black, McVey; dissent: Brisbin — 14 pages. (67)

Mistreatment of patient and failure to report for work assignment after ordered; grievance dismissed. *Re Sunnybrook Hospital & Sunnybrook Hospital Employees Union*, Loc. 777; *Riel grievance*, July 13, 1982. Majority: Springate, Ruttan; dissent: Beaulieu — 10 pages. (68)

Participation in work slowdown alleged — employees, as a group, refused to carry out procedure ordered by foreman; grievance denied. *Re Toronto Transit Commission & A.T.U., Loc. 113; Cassar et al grievance*, June 29, 1982. Egan — 8 pages. (69)†

Refusal of call-in — employer's disciplinary policy unreasonable; grievance allowed. *Re Marshall Gowland Manor & London and District Service Workers Union, Loc. 220; Mills grievance*, July 12, 1982. Majority: P. Picher, Beaulieu; dissent: Furlong — 21 pages. (70)

Unprofessional nursing conduct — no other person in department investigated for similar failure; five-day suspension reduced to one day. *Re St. Joseph's Hospital, London, & London and District Service Workers' Union, Loc. 220; Gilpin grievance*. See (42), *supra*. (71)

Work performance: failure to complete assigned chemical analyses — previous disciplinary record — no evidence of employer malice; grievance dismissed. *Re Allied Chemical Canada, Ltd., & Office and Technical Workers, U.A.W., Loc. 89; Diniro grievance*, June 28, 1982. Kruger — 7 pages. (72)

Work performance unsafe — grievor blacked out while driving large truck — three prior accidents on record; demotion to non-driving job appropriate. *Re Toronto, Municipality of Metropolitan, & Metropolitan Toronto Civic Employees Union, Loc. 43; Upshaw grievance*, July 16, 1982. Majority: Betcherman, Hayter; partial dissent: Tate — 11 pages. (73)

#### **Estoppel**

Past practice regarding scheduling of vacations — employer estopped from unilaterally changing practice during currency of agreement; grievance allowed. *Re Carling O'Keefe Breweries of Canada Limited & Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers, Loc. 325; group grievance*, July 23, 1982. Little — 22 pages. (74)\*†

Temporary transfer to job at lower wage rate — verbal assurance of higher rate — estoppel operative until reasonable notice given; grievance allowed in part. *Re Ottawa Civic Hospital & C.U.P.E., Loc. 576; Flessa grievance*, July 19, 1982. Majority: Simmons, Lapointe; dissent: Gigantes — 11 pages. (75)

#### **Grievance Procedure**

Failure to provide full information in filing grievances — agreement deficient regarding procedure for laid-off persons; technicality should not bar grievances. *Re Research Foods (1976) Limited & U.F.C.W.U.; Thack and Gibbs grievances*, July 27, 1982. O'Connor — 8 pages. (76)†

Policy grievance — not permissible where matter could be brought by individuals; grievance dismissed. *Re Allen Industries Canada & U.A.W.; policy grievance*, June 10, 1982. Palmer — 13 pages. (77)

Timeliness — mandatory time limits exceeded; board lacking jurisdiction to extend time limits. *Re Seneca College of Applied Arts and Technology & O.P.S.E.U.; Silberman grievance*, July 6, 1982. Brent, Ronson, McIntyre — 9 pages. (78)

Timeliness — reference to arbitration within time limit; grievance arbitrable. *Re McKinlay Transport Limited & Teamsters, Loc. 938; group grievance*, June 23, 1982.

Majority: Ellis, Marinelli; dissent: Harker — 13 pages. (79)

#### **Hiring**

Preference to graduate students in hiring — applying only when qualifications equal; grievance dismissed. *Re University of Toronto & Canadian Union of Educational Workers; policy grievance*, July 8, 1982. Knopf — 27 pages. (80)†

#### **Holidays**

Option days — payable notwithstanding that option days falling within Christmas shut-down period; grievance allowed. *Re Kelsey-Hayes Canada Limited & U.A.W., Loc. 636; policy grievance #409*, June 10, 1982. Palmer — 7 pages. (81)

#### **Holiday Pay**

Part-time nurses — no entitlement where not required to work on paid holiday; no conflict with *The Employment Standards Act*; grievances dismissed. *Re Niagara Homes for the Aged (Regional Municipality of Niagara) & O.N.A., Loc. 9; policy grievance and Bacon, Burkholder, Kendrick, Leam, Mosley, Uhrig, Vencel grievances and White, Martin group grievance*, June 16, 1982. Majority: Adamson, Werner; dissent: Robbins — 25 pages. (82)

Part-time nurses not paid for holiday — provision for holiday with pay not restricted to full-time nurses; grievance allowed. *Re Kenora District Home for Aged & O.N.A.; group grievance*, July 15, 1982. Majority: Brunner, Beaulieu; dissent: Zrum — 8 pages. (83)

Qualifying days; absence because of illness but no medical certificate provided — company had no clear published rule requiring proof by medical certificate; grievance allowed. *Re Kelsey-Hayes Canada Limited & U.A.W., Loc. 636; Correia grievance*, June 9, 1982. Palmer — 7 pages. (84)

#### **Hours of Work**

Appearance at own disciplinary hearing during off-duty hours — not entitled to be paid; grievance denied. *Re Stratford Board of Commissioners of Police & Stratford Police Association; Hughes grievance*, July 9, 1982. Aggarwal — 19 pages. (85)

Welfare plan provided to employees "regularly" working thirty hours per week or longer — determination of "regular"; grievance allowed. *Re Welland District Association for Retarded Incorporated & C.U.P.E., Loc. 2276; Wilkins grievance*, July 19, 1982. Devlin — 15 pages. (86)\*

#### **Illness**

Physical fitness to perform duties; obesity problem — employer entitled to require physical fitness test as condition for return to work; grievance dismissed. *Re Etobicoke, Corporation of Borough of, & Etobicoke Professional Firefighters Association, Loc. 1137; Oswin grievance*, July 14, 1982. Kennedy — 19 pages. (87)

Refusal to allow grievor to return to work pending certification of fitness alleged to be disciplinary response of company to grievor's absenteeism — not established on evidence; grievance dismissed. *Re Falconbridge Nickel Mines Limited & Sudbury Mine, Mill and Smelter Workers' Union, Loc. 598; Haggert grievance*, July 5, 1982. Saltman — 8 pages. (88)

**Job Evaluation**

Job evaluation techniques — no evidence of inconsistent application of techniques; grievance denied. *Re Westinghouse Canada Inc. & U.E., Loc. 543; union grievance*, June 14, 1982. Majority: Egan, Kacur; dissent: Bosnich — 8 pages. (89)

**Job Posting**

Temporary positions — not covered by job posting provisions — company acted reasonably and in good faith; grievance dismissed. *Re Sunbeam Corporation (Canada) Ltd. & U.E., Loc. 566; Sosrdatmodjo grievance*, July 28, 1982. Baum — 10 pages. (90)†

Temporary postings — employees on temporary work assignment to remain on job obtained until expiry of such posting — no daily posting; grievance dismissed. *Re Rockwell International of Canada Ltd. & U.A.W., Loc. 127; policy grievance*, July 12, 1982. H. Brown — 15 pages. (91)

**Jury Duty**

Provision for compensation for jury duty — no specific requirement that duty coincide with working hours; grievance allowed. *Re Transit Windsor & A.T.U., Loc. 616; policy grievance*, July 12, 1982. Hinnegan — 9 pages. (92)\*†

**Lay-off**

Bumping — employees to retain rate of pay of classification they were in at time of lay-off; grievance allowed. *Re Longyear Canada Inc. & I.A.M., Loc. 2412; policy grievance*, July 2, 1982. Lunney — 6 pages. (93)†

Bumping — insufficient work available for part of scheduled shift of senior grievor — grievor entitled to bump junior employee working in position formerly held by grievor; grievance allowed. *Re Sault Ste. Marie and District Group Health Association & O.N.A.; McLeod grievance*, May 27, 1982. Lunney, Burfoot, Beaulieu — 9 pages. (94)

Bumping: entitlement to training period — training period required; grievance allowed. *Re BASF Canada Inc. (Cornwall Works) & Canadian Paperworkers; Grant grievance*, July 19, 1982. Majority: Simmons, Quaife; dissent: Alguire — 10 pages. (95)

Bumping: grievor refusing offered job — estopped from re-asserting bumping rights; grievance dismissed. *Re Belkin Paperboard & Canadian Paperworkers Union, Loc. 1112; Sooley grievance*, July 21, 1982. O'Shea, Roffey, Paxton — 11 pages. (96)

Qualifications — junior employee more qualified than grievor; company acted in good faith; grievance dismissed. *Re Haley Industries Limited & U.S.W.A., Loc. 4820; McGregor grievance*, July 22, 1982. Kates — 8 pages. (97)†

Lay-off interview: presence of union official requested by grievor — not required by collective agreement; grievance dismissed. *Re McDonnell Douglas Canada Limited & U.A.W., Loc. 1967; DeCarlo grievance*, July 2, 1982. Egan — 5 pages. (98)†

Legal strike of employees from other bargaining unit causing employer to cease publication — not a lay-off; grievance dismissed. *Re Le Droit Ltee & Syndicat des Journalist D'Ottawa; group grievance*, July 2, 1982. Duchesneau-McLachlan — 10 pages. (99)† (English translation not available)

Permanent lay-off — grievor laid off out of seniority; grievance allowed. *Re Zenith Electroplating Division of T.K.M. (Canada) Ltd. & U.S.W.A., Loc. 7558; Barbiero grievance*, June 30, 1982. Rubenstein — 13 pages. (100)

Qualifications — grievor did not have present skill and ability in other divisions; grievance dismissed. *Re Otis Elevator Company Limited & Draftsmen's Association of Ontario, Loc. 164; McGinnis grievance*, July 13, 1982. O'Shea — 11 pages. (101)†

Temporary transfer — company having traditional rights of temporary transfer if position for less than thirty days; grievance denied. *Re Edwards, Unit of General Signal Ltd. & U.S.W.A.; Cahoon grievance*, July 5, 1982. Linden — 14 pages. (102)

**Management Rights**

Duty of fairness — no violation of collective agreement disclosed by management's failure to provide grievor with training; fairness doctrine not applicable; grievance dismissed. *Re Great Atlantic & Pacific Company of Canada Ltd. & U.F.C.W.U., Locals 175 and 633; Vachon grievance*, May 3, 1982. Majority: Palmer, Binning; dissent: Simon — 11 pages. (103)

**Maternity Leave**

Right to return to work within job classification — no contractual right to return to specific tasks performed prior to maternity leave; grievance denied. *Re De Havilland Aircraft of Canada Ltd. & U.A.W., Loc. 673; Bettess grievance*, May 19, 1982. Palmer — 7 pages. (104)\*

**Overtime**

Distribution; grievance allowed with remedy in kind rather than payment of damages. *Re Dominion Textiles Inc. & United Textile Workers of America, Loc. 468; Leger grievance*, July 19, 1982. D. Scott, Bosnich, Hamilton — 8 pages. (105)

Distribution — grievor having received reasonable amount of overtime over course of year; grievance denied. *Re Burlington, Corporation of City of, & C.U.P.E., Loc. 44 "A"; Wass grievance*, July 18, 1982. Rose — 21 pages. (106)†

Grinder operator not called in to work machine — use of machine by other employee incidental to his proper work; grievance dismissed. *Re Canadian Carborundum Company Ltd. & U.S.W.A., Loc. 4151; Haskin grievance*, July 16, 1982. Majority: Arthurs, McKerral; dissent: Urbanovics — 4 pages. (107)

**Overtime Pay**

Extension of work into next shift — overtime payable on scale of grievors' regular shifts; grievances dismissed. *Re Purity Packaging Ltd. & Canadian Paperworkers Union, Loc. 685; Ross and Corp grievances*, June 18, 1982. MacDowell — 9 pages. (108)

Payment for ninth and tenth hours on Mondays of special summer shift requested — hours not part of a regular shift and employees not required to come in on regular basis; grievance denied. *Re Carling O'Keefe Breweries of Canada Ltd. & Brewery Workers, Loc. 325; policy grievance*, June 7, 1982. Weatherill — 6 pages. (109)

**Premium Pay**

Work on Sunday and holiday — entitlement even though shift not ending on Sunday or holiday; grievance allowed. *Re The Citizen, a division of Southam Incorporated & Ottawa Typographical Union, Loc. 102; union grievance, May 20, 1982.* Weatherill — 8 pages. (110)

Work in toxic area — no specific or implied agreement — past practice inconsistent; grievance dismissed. *Re Port Weller Dry Docks, Division of Upper Lakes Shipping Ltd. & International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Loc. 680; Timney and Charles grievance, June 16, 1982.* Majority: Kennedy, O'Neill; dissent: Arnold — 25 pages. (111)

Call-back after working full shift during holiday — premium entitlement dependent only on work in excess of regular shift; may claim entitlement to either overtime or call-back premium; grievance allowed. *Re Humber Memorial Hospital Association & C.U.P.E., Loc. 1080; policy grievance, July 13, 1982.* Kennedy — 6 pages. (112)\*†

**Promotion**

Qualifications — grievor awarded posted job, then employer denied his acceptability alleging grievor's back disability rendered him unsuitable — medical evidence supported grievor's ability to do job; grievance allowed. *Re York University & I.U.O.E., Loc. 796; Nadolny grievance, June 18, 1982.* Black — 14 pages. (113)†

Qualifications — grievor not passing performance tests; grievance denied. *Re Hiway Market Limited & Retail, Commercial and Industrial Union, Loc. 206; Keeler grievance, June 11, 1982.* Majority: Brunner, Caplan; dissent: Rudrum — 11 pages. (114)

Qualifications — competition clause — grievor more senior but less fit to undertake heavy lifting in posted job; grievance dismissed. *Re Neo Industries Ltd. & U.E.; Gallant grievance, May 19, 1982.* Majority: H. Brown, MacDermid; dissent: Bosnich — 20 pages. (115)

Qualifications — grievor not possessing necessary qualifications; grievance denied. *Re Brampton Hydro Electric Commission & I.B.E.W., Loc. 636; Charbonneau grievance, June 14, 1982.* Majority: O'Shea, Parry; dissent: Fisher — 26 pages. (116)

Qualifications — grievor not possessing proper qualifications; grievance denied. *Re Fleet Industries & Lodge 171, I.A.M.; Richards grievance, June 4, 1982.* Brent — 7 pages. (117)

Qualifications — grievor not possessing sufficient related experience; grievance denied. *Re Kingston, Corporation of City of, & C.U.P.E., Loc. 141; Scott grievance, May 4, 1982.* Majority: Willes, McKeown; dissent: Piper — 11 pages. (118)

Qualifications — incumbent qualified and more senior than grievor; grievance dismissed. *Re Dominion Stores Ltd. & R.W.D.S.U., Loc. 414; Alden grievance, May 31, 1982.* Brent, Sargeant, Spaxman — 6 pages. (119)

Qualifications for lead hand position — grievor qualified; grievance allowed. *Re Owen Sound, Corp. of City of, & C.U.P.E., Loc. 443; Watson grievance, June 29, 1982.* Davis — 10 pages. (120)†

Qualifications: grievor possessing seniority and ability — company acting in bad faith by refusing to interview grievor; grievance allowed. *Re DeHavilland Aircraft of Canada Ltd. & U.A.W., Loc. 673; Masterton grievance, May 19, 1982.* Palmer — 12 pages. (121)

Qualifications: provision for assessment of personal qualities — reliance on interview consistent with collective agreement; grievance dismissed. *Re Ontario Hydro & C.U.P.E., Ontario Hydro Employees Union, Loc. 1000; Boldt grievance, May 21, 1982.* Kennedy, Lewis, McSweeney; addenda: Lewis, McSweeney — 22 pages. (122)

Non-competitive seniority clause — company erred in failing to obtain relevant detail of grievor's prior work history; grievance allowed. *Re Ontario Hydro & C.U.P.E., Loc. 1000; Sparkes grievance, June 29, 1982.* Majority: H. Brown, McCullough; dissent: Abbott — 26 pages. (123)

**Recall**

Qualifications — grievor's qualifications established; grievance allowed. *Re CAE-Montupet Diecast Limited & I.A.M., Loc. 268; Rockwell grievance, June 22, 1982.* Devlin — 9 pages. (124)†

Supplementary agreement ending strike — empowers employer to set order of recall but not empowered to set new conditions; grievance allowed. *Re Wabco Ltd. & U.E., Loc. 558; McKinney grievance, June 14, 1982.* Davis — 13 pages. (125)†

Qualifications — failure to prove lack of qualifications; reinstatement with compensation. *Re A.E. Long and Company Ltd., & E.C.W.U., Loc. 620; Pynn grievance, July 23, 1982.* Bernstein — 13 pages. (126)†

**Sabbatical Leave**

Accrual of sabbatical credit — accruing during sick leave and long term disability leave but not during unpaid leave of absence. *Re York University & York University Faculty Association; policy grievance, June 3, 1982.* Majority: Brunner, Cunningham; dissent: Binning; dissent in part: Cunningham — 24 pages. (127)

**Scheduling of Work**

Change in shift without proper notice — provision for overtime premium in lieu of notice; premium limited by number of hours worked; grievance allowed. *Re Globe and Mail & Southern Ontario Newspaper Guild; Currie grievance, June 9, 1982.* Teplitsky, Tate, Winkler — 4 pages. (128)

Reduction of work week in lieu of lay-off — no occasion for exercise of bumping rights — union vote cannot limit management function; grievance dismissed. *Re Croydon Furniture Systems Inc. & U.S.W.A., Loc. 5019; Barnett grievance, July 8, 1982.* Roach — 15 pages. (129)

**Seniority**

Calculation — past service upon completion of probationary period incorrect; grievance allowed. *Re Sheridan College & O.P.S.E.U.; Smith grievance, May 17, 1982.* Majority: Weatherill, Beaulieu; dissent: Beaudoin — 16 pages. (130)

Part-time employees — pro-rating not required by collective agreement; grievance dismissed. *Re Kenora Board of Education & C.U.P.E., Loc. 1939; Zurkan grievance, June 14, 1982.* Aggarwal — 21 pages. (131)†

Position in salary grid — determined by over-all seniority and not seniority within section; grievances allowed. *Re Tillsonburg and District Association for Mentally Retarded & O.P.S.E.U., Loc. 115; Crowder, Ferriera, Lamoure and Puklicz grievances*, June 3, 1982. Majority: Palmer, Robinson; dissent: Spencer — 14 pages. (132)

Calculation — continuous past casual service contributes to seniority; grievance dismissed. *Re Midland Board of Park Management & O.P.S.E.U., Loc. 328; Merkley grievance*, July 16, 1982. Majority: Betcherman, Dalrymple; dissent: Perrin — 9 pages. (133)

Calculation of "classification seniority" — accrues upon placement in relevant classification and continues for three months upon transfer to another classification; grievance dismissed. *Re Wardair Canada (1975) Ltd. & I.A.M.; policy grievance*, July 15, 1982. Palmer — 9 pages. (134)

#### Sick Pay

Disclosure of symptoms on sick pay form — expectation of disclosure consistent with the agreement; grievance denied. *Re Toronto, Corporation of City of, & C.U.P.E., Loc. 43; Ainsworth grievance*, July 6, 1982. Majority: Jolliffe, Milks; dissent: Tate — 26 pages. (135)

#### Union Rights

Intimidation and coercion of union official alleged — no specific incident related; grievance denied. *Re Brantford Board of Park Management and Recreation Commission & Brantford Civic Employees' Union, Loc. 181, C.U.P.E.; Chadwick grievance*. See (65), *supra*. (136)†

#### Vacation Pay

Calculation — employer erred in calculating grievor's vacation pay when vacation entitlement date changed from September 30th cut-off date to the anniversary date of individual employee; grievance allowed. *Re Nipissing Area Joint Hospital Laundry Inc. & S.E.U., Loc. 478; Turgeon grievance*, May 13, 1982. Majority: Palmer, Ortlieb; dissent: Mustard — 10 pages. (137)

Reduction of amount for absence because of illness — entitlement for work performed; grievance dismissed. *Re Chronicle Journal-Times News & Thunder Bay Typographical Union, Loc. 44; Stewart grievance*, May 25, 1982. Aggarwal — 26 pages. (138)†

Timing of payment for part-time employees altered by company — no protective clause preventing change in timing; grievance denied. *Re Collingwood General and Marine Hospital & S.E.U., Loc. 204; policy grievance*, June 15, 1982. Majority: Swinton, Jarvis; dissent: Craven — 17 pages. (139)

Calculation — to be based on normal hours of work; grievance dismissed. *Re International Parts (Canada) Ltd. & U.S.W.A.; union grievance*, July 22, 1982. Majority: Schiff, Edson; dissent: Naiman — 5 pages. (140)

Entitlement — service credits required to fall within first half of year; grievance dismissed. *Re Canadian General Electric Company Ltd. & U.E., Loc. 524; policy grievance*, July 28, 1982. Majority: Dunn, Bertuzzi; dissent: Russell — 4 pages. (141)

#### Construction Industry Arbitration — Ontario Labour Relations Board

The following awards were filed during the month of May, 1982.

#### Arbitrability

Abandonment of bargaining rights — union had not pursued bargaining rights since 1975; employer not bound by provincial agreement; grievance not arbitrable. *Re Twin City Plumbing and Heating and Groff Plumbing & Heating Limited and United Association of Journeymen and Apprentices of Plumbing and Pipe Fitting Industry of United States and Canada, Local 527; union grievance*, April 27, 1982. Furness, Ade, Kobryn — 18 pages. (142)

#### Collection

Lower wage rate inapplicable — employer prohibited from deducting for lost tools by virtue of *The Employment Standards Act*; compensation with interest ordered. *Re Butera Construction Ltd. and Labourers International Union, Local 183; Napoleoni grievance*, April 16, 1982. Davis, Ade, Rutherford — 6 pages. (143)

Failure to pay prescribed overtime rate — quantum of damages; grievance allowed. *Re Roman Plastering & Acoustical Co. and United Brotherhood of Carpenters and Joiners of America, Local 2486; Foschia grievance*, April 14, 1982. Brent, Wightman, Cooke — 2 pages. (144)

Failure to remit benefit funds — quantum of damages; grievance allowed. *Re Duman Limited and Sheet Metal Workers International Association, Local 537; union grievance*, March 31, 1982. Howe, Wightman, Kobryn — 2 pages. (145)

Work covered by collective agreement — subcontracted to members of different union — quantum of damages; grievance allowed. *Re Ellis Don Limited and Ontario Provincial Conference of International Union of Bricklayers and Allied Craftsmen, Local 12, Kitchener; u' on grievance*, April 30, 1982. Mitchnick, Ronson, Hodges — 5 pages. (146)

#### Contracting Out

Company president did carpentry work — not prohibited by provincial agreement; grievance dismissed. *Re G. Lavictoire and Brothers Ltd. and United Brotherhood of Carpenters and Joiners of America, Local 1988; union grievance*, April 30, 1982. Springate, Ade, Ballantine — 6 pages. (147)

#### Lay-Off

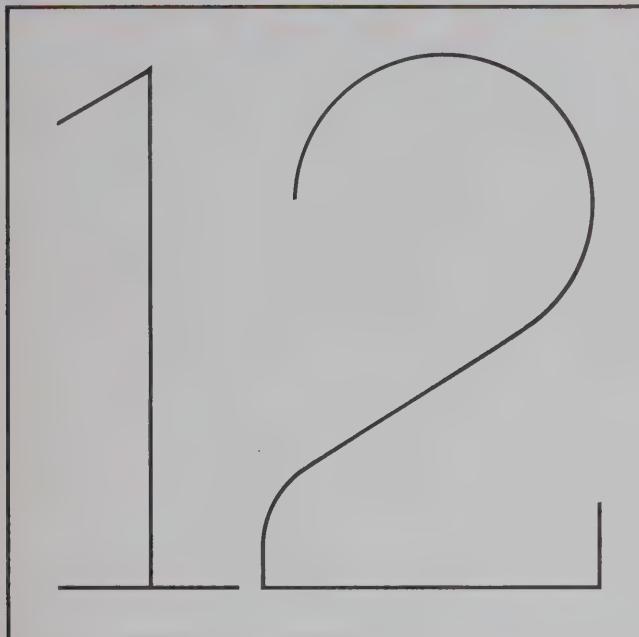
Employer entitled to retain emergency help until lay-off — some emergency hirees eligible for first apprenticeships; union steward not to be laid off until fewer than six employees on the job; grievances allowed in part. *Re Lewis Insulations Services Inc. and International Association of Heat and Frost Insulators and Asbestos Workers, Local 95; union grievances*, April 29, 1982. Majority: Franks, Bell; dissent in part: Ballantine — 14 pages. (148)

#### Living Accommodation

Failure to provide suitable board and living accommodation — employer made improper claims against fund; grievance allowed. *Re Lewis Insulation Services Inc. and International Association of Heat and Frost Insulators and Asbestos Workers, Local 95, and Master Insulators' Association of Ontario, Inc.; union grievance*, April 28, 1982. Satterfield, Ronson, Kobryn — 26 pages. (149)

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# Monthly Bulletin



Ontario Ministry of Labour



Hon. Russell H. Ramsay, Minister  
T.E. Armstrong, QC, Deputy Minister

Office of Arbitration  
400 University Avenue, 6th Floor  
Toronto, Ontario  
M7A 1T7  
Tel. (416) 965-5669

Miss Jean M. Read, Director

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Office of Arbitration as a service to  
persons involved in labour-management  
arbitrations.

## Purchase of Awards

All awards listed in the *Monthly Bulletin* may be reviewed at the Office of Arbitration, 400 University Avenue, 6th Floor, Toronto, Ontario, M7A 1T7. Copies may be purchased for a fee of 50¢ per page and orders will be filled upon receipt of a request and a cheque or money order payable to the Treasurer of Ontario, for the applicable amount.

## Appointment of Arbitrators

Forms for requests for appointment of arbitrator under section 45 of *The Labour Relations Act* are available on request, from the Office of Arbitration.

## Grievance Arbitration

The following awards were filed with the Office of Arbitration during the months of July and August, 1982. The summary was prepared under the supervision of C.G. Simmons, B.A., B.C.L., LL.M.; D.D. Carter, B.A., B.C.L., LL.B. and K.P. Swan, P. Eng., LL.B.

\*Indicates award to be reported in full or in part in *Labour Arbitration Cases*.

†Indicates award issued under section 45 of *The Labour Relations Act*.

## Arbitrability

Harassment by supervisor alleged — not disciplinary; board not having jurisdiction to deal with grievance. *Re Centennial College of Applied Arts and Technology & O.P.S.E.U.; Szebik grievance*, August 4, 1982. Brent, Beaudoin, Marszewski — 13 pages. (1)

Reference under s. 45 after arbitration initiated — still arbitrable under s. 45. *Re Royal York Hotel (Canadian Pacific Hotels Limited) & Hotel, Restaurant and Cafeteria Employees Union, Loc. 75; policy grievance*, July 29, 1982. Samuels — 13 pages. (2)\*†

## Bargaining Unit

Employees on production in engineering department in different plant at same location not included — no dues deductible; grievance dismissed. *Re A.P. Green Refractories (Canada) Ltd. & United Glass and Ceramic Workers of North America, Loc. 228; policy grievance*, August 13, 1982. Black — 11 pages. (3)†

Inclusion of specified classifications — community of interest is principal criteria; grievance dismissed. *Re Metropolitan Board of Commissioners of Police & Metropolitan Toronto Police Association; union grievance*, August 13, 1982. P. Picher — 33 pages. (4)

**Classification**

Change of duties — new classification not established; grievance denied. *Re Nestle Enterprises Limited & R.W.D.S.U., Loc. 488; union grievance*, July 30, 1982. Weatherill — 7 pages. (5)

Creation of new classification of general worker — same as existing classification of helper but lower rate of pay; grievance allowed. *Re Windsor Western Hospital & C.U.O.E.; policy grievance*, August 23, 1982. McLaren — 12 pages. (6)

Elimination of head nurse position alleged — removal of two duties not a substantial change; grievance allowed. *Re Little's Nursing Home (Tecumseh) Limited & O.N.A.; Makulski grievance*, March 29, 1982. Lunney, Dumouchelle, Beaulieu — 19 pages. (7)

Higher classification claimed — incumbent of higher classification doing more complex work than other employees; grievance dismissed. *Re Holiday Inn — Toronto Don Valley & Hotel, Restaurant and Cafeteria Employees Union, Loc. 75; policy grievance*, August 19, 1982. Majority: Gorsky, Parker; dissent: Tate — 12 pages. (8)

New classification created — rate to be set as same as that for position entailing like amount of responsibility; grievance allowed. *Re Royal Ottawa Hospital & O.N.A.; policy grievance*, August 24, 1982. Majority: Carter, Mayne; dissent: O'Byrne — 11 pages. (9)

Student classification established — employer not having right to remove students from system of job progression; grievance allowed. *Re Du Pont Canada Inc. — Ajax Works & Teamsters Loc. Union 1166; union grievance*, July 6, 1982. Majority: O'Shea, Blandizzi; dissent: Cook — 17 pages. (10)

Work of higher-paid classification claimed — grievor performing job in higher classification exclusively for more than one working day; grievance allowed. *Re Dominion Stores Limited & U.S.W.A.; Hobbs grievance*, August 16, 1982. C. Brown — 6 pages. (11)

**Collective Agreement**

Retroactivity: increase in wage rate sought pursuant to memorandum of settlement for collective agreement signed after grievor's resignation — grievance allowed. *Re William Nielson Ltd. & Milk and Bread Drivers, Dairy Employees, Caterers and Allied Employees, Local 647; Jupp grievance*, August 12, 1982. P. Picher — 14 pages. (12)\*

**Contracting Out**

Contracting out resulting in bump of seasonal classification — subsequent contracting out caused no lay-off of bargaining unit personnel — employer breach of obligation to consult; grievances allowed in part. *Re Douglas Memorial Hospital & C.U.P.E., Loc. 1531; group grievance and Rutter grievance*, August 27, 1982. Davis — 8 pages (13)†

**Damages**

Calculation where unjust discharge — interest inappropriate. *Re Unger Nursing Home Limited & Christian Labour Association of Canada; Glasser grievance*, July 29, 1982. O'Shea, Mustard, Adema; addendum: Adema — 25 pages. (14)

**Demotion**

Position discontinued — grievor choosing to work as general duty nurse — change in salary grids resulting in less money, no demotion; grievance dismissed. *Re Peel Manor Home for the Aged (Regional Municipality of Peel) & O.N.A.; Mayer grievance*, August 13, 1982. Majority: Brent, Eames; dissent: Beaulieu — 16 pages. (15)

**Discharge**

Absence without leave — automatic discharge as a result of terms of collective agreement; grievance denied. *Re Beacon Hill Lodges of Canada Ltd. & S.E.I.U., Loc. 268; Getz grievance*, August 18, 1982. Duchesneau-McLachlan — 5 pages. (16)

Absenteeism — authorized leaves not to be taken into account; grievance allowed. *Re Canadian Timken Limited & U.S.W.A., Loc. 4906; Turner grievance*, August 5, 1982. O'Shea — 21 pages. (17)

Absenteeism — disciplinary sequence followed by company; grievance dismissed. *Re Domglas Inc., Hamilton, & United Glass and Ceramic Workers of North America, Loc. 203; Duncan grievance*, August 13, 1982. Majority: Black, Bertram; dissent to follow: Ferguson — 10 pages. (18)

Absenteeism — no progressive discipline imposed by employer; reinstatement but damages to reflect record of prior absenteeism. *Re Denison Mines Limited & U.S.W.A.; Grenier grievance*, August 18, 1982. O'Shea — 16 pages. (19)

Absenteeism due to illness — evidence indicates that grievor should be able to provide reasonable attendance in the future; grievance allowed. *Re Bell Canada & Communications Workers of Canada; Steeves grievance*, August 9, 1982. P. Picher, Churchill-Smith; addendum: Robbins — 19 pages. (20)

Altercation with another employee — other employee contributed to incident — long work record — remorse — conditional reinstatement after two month's suspension. *Re Binks Manufacturing Company of Canada Limited & Sheet Metal Workers' International Association, Loc. 540; Sessa grievance*, August 18, 1982. Knopf — 23 pages. (21)†

Assault — violent physical assault upon foreman; grievance denied. *Re Gen-Auto Shippers & Teamsters Union Loc. 938; Wallace grievance*, August 26, 1982. O'Connor — 5 pages. (22)

Assault and obscene verbal abuse with racial slurs directed at another employee in company parking lot — established on evidence; grievance dismissed. *Re Leco Industries Limited & E.C.W.U.; Johnally grievance*, August 25, 1982. Weatherill, More, White — 6 pages. (23)

Assault upon supervisor alleged — established on evidence — penalty not contested; grievance dismissed. *Re Stelco Inc., Hilton Works, & U.S.W.A., Loc. 1005; Woodworth grievance*, August 9, 1982. Majority: Kennedy, Baker; dissent: Marshall — 21 pages. (24)

Cash shortage attributed to grievor; no opportunity for grievor to explain, grievor using bad language after incident — six weeks' suspension substituted. *Re Sutton Place Hotel & Restaurant and Cafeteria Employees Union, Loc. 75; Casey grievance*, August 16, 1982. Dunn, Wakely, Tate — 8 pages. (25)

Culminating incident — poor workmanship on two occasions — poor past record; grievance dismissed. *Re Livingston Industries Limited & International Woodworkers of America; Watts grievance*, August 17, 1982. Majority: Adams, Tait; dissent: Bedard — 14 pages. (26)\*

Culminating incident — progressive discipline imposed by company without desired results; grievance denied. *Re Fisher Controls Company of Canada & U.A.W., Loc. 636; Armstrong grievance*, August 6, 1982. O'Shea — 15 pages. (27)

Dishonesty: receiving benefits under false pretences — grievor taking other employment while absent due to her disability; grievance denied. *Re Fabricated Steel Products (Windsor) Limited & U.A.W., Loc. 195; Jacques grievance*, August 25, 1982. Brent — 16 pages. (28)

Drinking on the job plus assault on foreman — previous similar incident; grievance dismissed. *Re Molson's Brewery (Ontario) Limited & Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers, Loc. 304; Hamiuka grievance*, August 13, 1982. O'Connor — 5 pages. (29)

Failure to notify of absence from work — history of absenteeism — indications of improvement; reinstatement without compensation. *Re Toronto, Corporation of City of, & Metropolitan Toronto Civic Employees Union, Loc. 43; Zimmerman grievance*, August 21, 1982. Brent, Milks, Tate; addendum: Tate — 10 pages. (30)

Failure to report to work upon recall within time limit — medical certificate substantiating illness produced at hearing; grievance allowed. *Re Livingston Industries Limited and Livingston Distribution Centres Limited (Tillsonburg) & International Woodworkers of America, Loc. 2-167; Richardson grievance*, August 3, 1982. Majority: Samuels, Bedard; dissent: Ruttan; addendum: Bedard — 17 pages. (31)

Fighting — one grievor committed dangerous attack on other; settlement reinstating one grievor without compensation. *Re TIW Industries Limited & U.S.W.A.; Pamplin and Joseph grievances*, July 27, 1982. Teplitsky — 2 pages. (32)

Provision for termination for prolonged disability — time for acting on provision had passed; grievance allowed. *Re Sunnybrook Hospital & Sunnybrook Hospital Employees' Union, Loc. 777; Larocque grievance*, August 20, 1982. Majority: Baum, Beaulieu; dissent: Bell — 11 pages. (33)

Quit alleged — left work after incident with supervisor — no expressed intention to quit; reinstatement without compensation. *Re S.A. Armstrong Limited & U.S.W.A., Loc. 8481; Genereaux grievance*, August 12, 1982. Willes — 8 pages. (34)†

Mishandling of cash by cashier — no implication of dishonesty; reinstatement without compensation. *Re Wandlyn Hotels Limited & Hotel Restaurant Employees Union, Loc. 743; Fulton grievance*, August 5, 1982. Ianni — 13 pages. (35)

Receipt of stolen company property — grievance of one grievor dismissed; reinstatement without compensation for other grievor. *Re Kayser-Roth Canada Limited & Amalgamated Clothing and Textile Workers Union, Loc. 1826; Gratton and Wilkins grievances*, August 20, 1982. McLaren, Fillion, Clark — 9 pages. (36)

Section 61.5 of *Canada Labour Code*; unauthorized absence — one prior incident not justifying treatment as culminating incident; damages instead of reinstatement. *Re Westlake Moving and Storage Ltd., Scarborough, & Albert Martin*, July 28, 1982. Teplitsky — 2 pages. (37)

Sexual harassment of passenger — serious misconduct while operating a bus; grievance dismissed. *Re London Transit Commission & A.T.U.; Brown grievance*, August 20, 1982. R.J. Roberts — 9 pages. (38)†

Termination of probationary contracts of teachers because of financial constraints — proper notice not given; damages appropriate. *Re Red Lake Board of Education & Red Lake Women Teachers' Association & Ontario Public School Men Teachers' Federation — Red Lake District; group grievance*, August 11, 1982. Kennedy — 17 pages. (39)\*

Theft of small amount of fare money — good work record — lengthy suspension sufficient deterrent; reinstatement without compensation. *Re Toronto Transit Commission & A.T.U., Loc. 113; Rios grievance*, April 28, 1982. Majority: Lunney, Beaulieu; dissent: Caplan — 12 pages. (40)

Unauthorized absence during shift — prior disciplinary record; grievance dismissed. *Re Stelco Inc., Page-Hersey Works, & U.E., Loc. 523; Sigut grievance*, August 13, 1982. Majority: Kennedy, Storie; dissent: Bosnich — 15 pages. (41)

Workmanship poor — reasonable record of long service with company; one-month suspension substituted for discharge. *Re Romeo Machine Shop Limited & U.A.W., Loc. 195; Bazinet grievance*, July 22, 1982. McLaren — 10 pages. (42)

Work performance: lack of attentiveness to job — grievor ill at the time; grievance allowed in part. *Re Canadian Technical Tape & Chemical, Energy and Allied Workers, Loc. 1003; Lalonde grievance*, August 10, 1982. Majority: P. Picher, Mutimer; addendum: Gordon — 15 pages. (43)

#### Discipline

Careless work alleged — written warning for carelessness unfounded; linked to launching of previous grievance; first grievance dismissed, second grievance allowed. *Re Trophy Foods Limited & U.F.C.W.U., Loc. 175; Hennessy and Hancock grievances*, August 27, 1982. Davis — 16 pages. (44)†

Horseplay: throwing beer bottle in direction of fellow employee — provocation; one-month suspension reduced to two weeks. *Re Molson's Brewery (Ontario) Limited, Barrie, and Brewery Workers, Loc. 306; Hutter grievance*, August 18, 1982. R.J. Roberts — 12 pages. (45)

Insubordination — condonation of grievor's behaviour by supervisor before discipline issued; grievance allowed. *Re Freeport Hospital & London and District Service Workers Union, Loc. 220; Vanderpool grievance*, August 20, 1982. Majority: R.J. Roberts, Beaulieu; dissent: Cancilla — 18 pages. (46)

Insubordination — one grievor not responsible for carrying out order, previous breaches not disciplined; one grievance allowed, others reduced to written warnings. *Re Stratford, Corporation of City of, & C.U.P.E.; policy grievance*, August 18, 1982. Knopf — 15 pages. (47)†

Insubordination and abuse of company property — case of abuse not made out; symbolic reduction to three days' suspension. *Re Canadian Westinghouse Company Limited & U.E., Loc. 504; Katolinsky grievance*, July 28, 1982. R.J. Roberts — 19 pages. (48)†

Insubordination: refusal to attend work after permission to attend union meeting revoked — meeting not urgent; grievance dismissed. *Re Noranda Metal Industries Limited & I.B.E.W.; Wood grievance*, August 18, 1982. Knopf — 19 pages. (49)†

Insubordination: refusal to perform assigned work — adamant refusal to accept blame for obvious misconduct; grievance denied. *Re Airline (Malton) Credit Union Limited & Union of Bank Employees, Loc. 2104; Beckett grievance*, August 4, 1982. O'Shea — 19 pages. (50)

Insubordination: refusal to perform assigned work when ordered — vulgar language to supervisor; grievance dismissed. *Re Rio Algom Limited & U.S.W.A., Loc. 5417; Morin grievance*, August 20, 1982. O'Shea — 12 pages. (51)

Insubordination: refusal to perform work assigned — no unsafe or unlawful act assigned; grievance dismissed. *Re Stelco Inc., Hilton Works, & U.S.W.A., Loc. 1005; Meyer grievance*, July 6, 1982. Majority: Adams, Storie; dissent: Marshall — 8 pages. (52)

Leaving work station — grievor alleged to be excessively idle — not established; grievance allowed. *Re Worthington Canada Inc. & I.A.M.; Milton grievance*, August 10, 1982. Betcherman — 4 pages. (53)†

Leaving work station without permission — company rule applicable to voluntarily undertaken overtime assignment; grievances dismissed. *Re Wabco Ltd. & U.E., Loc. 558; Holland and Poos grievances*, July 29, 1982. O'Connor — 5 pages. (54)†

Theft of food — contravention of company rules which had been distributed and available to employees; grievance dismissed. *Re St. Mary's General Hospital & London and District Service Workers' Union, Loc. 220; Hetherington grievance*, August 23, 1982. Majority: Jolliffe, Cook; dissent: Beaulieu — 15 pages. (55)

Unauthorized attendance at certification vote during working hours — trivial breach — discipline disproportionate; lesser warning substituted. *Re Westgate Lodge Nursing Home Inc. & S.E.I.U., Loc. 183; Rooper and Mallory grievances*, August 23, 1982. Swan — 6 pages. (56)

Unsafe care of patient — good work record; written reprimand to be substituted for three-day suspension. *Re St. Vincent Hospital & I.U.O.E., Loc. 796; Tasse grievance*, August 24, 1982. Majority: Carter, Fulford; partial dissent: Bentley — 7 pages. (57)

Wilful damage alleged while not established; grievance allowed. *Re Stelco Inc., Hilton Works, & U.S.W.A., Loc. 1005; Mason grievance*, July 30, 1982. Majority: R.J. Roberts, Marshall; dissent: Moran — 19 pages. (58)

### Employment Status

Two general contractors performing carpentry work, including general maintenance and repair work to buildings and equipment alleged to be employees — employment status not established; grievance dismissed. *Re Peel Board of Education & C.U.P.E., Loc. 2544; policy grievance*, August 15, 1982. Devlin — 37 pages. (59)†

### Estoppel

Practice of requiring "artificial resignations" from summer students — union estoppel from a remedy other than a simple declaration. *Re Consolidated-Bathurst Packaging Limited & International Woodworkers of America, Loc. 2-242; policy grievance*, August 10, 1982. Majority: MacDowell, Rogers; dissent in part: Bloom — 32 pages. (60)\*

Settlement of previous similar grievance binding company to pay rate other than rate specified for temporary labourers until expiry of collective agreement; grievance allowed. *Re Stratford, Corporation of City of, & C.U.P.E., Loc. 197; policy grievance*, August 18, 1982. Knopf — 15 pages. (61)†

### Grievance Procedure

Extension of time limits — reasonable grounds for delay established; no substantial prejudice to company; grievance arbitrable. *Re Stelco Inc., Hilton Works, & U.S.W.A., Loc. 1005; Dean grievance*, August 11, 1982. Majority: Adams, Marshall; dissent: Murray — 20 pages. (62)

Group grievance inapplicable to individual case — subsequent grievance rooted in former grievance also inappropriate; group grievance not arbitrable. *Re Douglas Memorial Hospital & C.U.P.E., Loc. 1531; group grievance and Rutter grievance*. See (13), *supra*. (63)†

### Holiday Pay

Calculation — past practice of using averaging approach changed by employer — collective agreement unambiguous — union advised of intended change prior to renegotiation — no estoppel; grievance dismissed. *Re Sault Ste. Marie Transportation Commission & United Transportation Union; group grievance*, April 29, 1982. Majority: Teplitsky, Forbes; dissent: Barich — 9 pages. (64)

Qualifying days — employees laid off and not working qualifying shifts; grievance denied. *Re Hamilton Gear Machine Company, Division of Compro Limited, & International Molders and Allied Workers Union, Loc. 28; union grievance*, August 20, 1982. H. Brown — 14 pages. (65)\*

Regular part-time nurses unpaid for holiday work — provisions to be interpreted in light of *The Employment Standards Act*; grievances allowed. *Re Hotel Dieu Hospital & O.N.A.; Behlau and others grievances*, July 22, 1982. Majority: Kirkwood, Gordon; dissent: Moran — 32 pages. (66)

### Illness

Fitness to return to work: back injury — medical evidence not supporting fitness for work entailed; grievance dismissed. *Re Wabco Ltd. & U.E., Loc. 558; Castle grievance*, August 12, 1982. Little — 22 pages. (67)†

**Fitness to return to work: delay on employer's part in allowing grievor to return to work after injury — delay unwarranted; grievance allowed.** *Re Bake-Rite Foods Inc. & Bakery, Confectionery and Tobacco Workers' International Union, Loc. 264; Bhatti grievance*, July 22, 1982. Teplitsky — 9 pages. (68)

#### Job Posting

Failure to post notice of vacancies — incumbents would have been ineligible to apply — declaration of breach. *Re Sunar Division of Hauserman Limited & U.S.W.A., Loc. 3292; policy grievance*, August 9, 1982. O'Shea — 10 pages. (69)

#### Lay-off

Cancellation of vacations and paid personal holidays — postponement of vacations permissible but paid personal holidays payable if qualifying days missed by reason of lay-off; grievance allowed in part. *Re Standard Tube Canada Limited & U.A.W., Loc. 636; policy grievance*, undated. Ianni — 8 pages. (70)

Involuntary transfers resulting in lay-offs — no violation of collective agreement; grievances dismissed. *Re St. Lawrence College & O.P.S.E.U., Loc. 417; Hall, Guy, Boone, Wood, Smith, Preddie, Kelly and Primeau grievances*, August 11, 1982. Majority: O'Shea, Hallsworth; dissent: McIntyre — 17 pages. (71)

Qualifications — grievor lacking requisite skill and experience; grievance dismissed. *Re Liquid Carbonic Canada Ltd. & U.S.W.A., Loc. 12998; Bedore grievance*, August 9, 1982.

Majority: Kennedy, Challis; dissent: Penny — 7 pages. (72)

Qualifications: junior employees retained during shutdown — some grievors having equal ability to do the job; some grievances allowed. *Re Sherman Mine, Cliffs of Canada, Limited, Manager, & U.S.W.A., Loc. 6896; Hall, Smith and others grievances*, August 20, 1982. Adamson — 17 pages. (73)†

Reduction of regular hours for senior employees — junior employees had hours increased; grievance allowed. *Re Sun Haven Nursing Home & London and District Service Workers' Union, Loc. 220; union grievance*, July 27, 1982. Teplitsky, Brisbin, Beaulieu — 5 pages. (74)

Transfer out of unit — constituting lay-off; grievances allowed. *Re Firestone Canada Inc. & United Rubber Workers, Loc. 113; Donnelly and McGlynn grievances*, August 11, 1982. Devlin — 17 pages. (75)†

#### Leave of Absence

Paid special leave requested by grievor — employer within its rights to grant unpaid leave of absence; grievance denied. *Re Confederation College & O.P.S.E.U.; Smith grievance*, August 11, 1982. Majority: O'Shea, Courtney; dissent: Millard — 25 pages. (76)

Special leave by reason of snow conditions preventing attendance at work requested — refused pre-emptorily by employer; grievance allowed. *Re Canada Post Corporation of Canada & Terrance Gardhouse*, August 6, 1982. Saltman — 7 pages. (77)

#### Overtime

Assignment of overtime to employee outside eligible group — employer discretion in work assignment — no intent to circumvent overtime provisions; grievance dismissed. *Re CAE-Montupet Diecast Ltd. & I.A.M., Loc. 268; Gaul grievance*, August 27, 1982. Davis — 9 pages. (78)†

Distribution: work given to employee from another classification — temporary transfer must not defeat overtime provisions; grievance allowed. *Re Sheldons Engineering Limited & U.S.W.A., Loc. 2931; Wittig grievance*, July 30, 1982. Devlin — 14 pages. (79)†

#### Premium Pay

Attendance at course on day off — no express requirement to attend, grievors aware of payment scale; grievances dismissed. *Re Ontario Hydro Commission of Ontario & C.U.P.E., Loc. 1000; Bray, Andrews and others grievances*, undated. Majority: Ianni, Redford; dissent: Egner — 10 pages. (80)

Covering off for illness — employees entitled to be paid at time and one-half; grievance allowed. *Re The Citizen, Division of Southam Inc., & Ottawa Printing and Graphic Communications Union, Loc. N62; union grievance*, July 13, 1982. Majority: P. Draper, Kearney; dissent: Dinsdale — 9 pages. (81)

Overtime — grievor required to work within twenty-four hours of his regular eight-hour shift; entitled to be paid at overtime rates; grievance allowed. *Re Gates Canada Inc. & United Rubber Workers of America, Loc. 733; White grievance*, July 27, 1982. Weatherill — 6 pages. (82)

#### Procedure

Concurrent proceedings before Canada Labour Relations Board — adjournment appropriate. *Re Wardair Canada (1975) Ltd. & Canadian Air Line Flight Attendants' Association; Viala grievance*, August 27, 1982. H. Brown — 5 pages. (83)

#### Promotion

Part-time employee promoted instead of full-timer — provision that employer give preference to full-time employees; grievance allowed. *Re Sunbeam Home & London and District Service Workers Union, Loc. 220; Leonhardt grievance*, August 4, 1982. McCulloch, Sanderson, Robbins — 12 pages. (84)

Qualifications — union failed to establish grievor's equality with incumbents; grievance dismissed. *Re Windsor Raceway Holdings Ltd. & Windsor Raceway Security Personnel Association; Stone grievance*, undated. Ianni, Bartlet, Douglas — 8 pages. (85)

Qualifications — senior employee lacking necessary qualifications; grievance dismissed. *Re Warren Knit, Division of Cluett Peabody Canada, Inc., & United Textile Workers of America; Turnbull grievance*, July 8, 1982. McLaren — 6 pages. (86)

Non-competitive seniority clause — employer erred in choosing candidate outside bargaining unit — directed to reconsider bargaining unit applicants for requisite experience and ability. *Re Chedoke-McMaster Hospitals & C.U.P.E., Loc. 839; Lavigne grievance*, July 28, 1982. Betcherman — 5 pages. (87)†

Qualifications — grievor's attendance record poor; grievance denied. *Re Wellesley Hospital & S.E.U., Loc. 204; Owen grievance*, June 22, 1982. Majority: Teplitsky, Mustard; dissent: Jessop — 7 pages. (88)

Qualifications — grievor lacking experience in mechanical and electrical trades as required; grievance dismissed. *Re St. Lawrence Seaway Authority & Canadian Brotherhood of Railway, Transport and General Workers; Cleveland grievance*, July 28, 1982. H. Brown — 21 pages. (89)

Qualifications — grievor not possessing relative equivalent qualifications; grievance denied. *Re Bristol Myers Pharmaceutical Group & U.A.W., Loc. 1538; Pound grievance*, July 8, 1982. H. Brown — 15 pages. (90)

Qualifications — grievor not tested nor interviewed adequately — employer to reconsider; grievance adjourned *sine die*. *Re O & K Orenstein & Koppel Canada Ltd. & I.A.M., Loc. 1740; Foley grievance*, February 10, 1982. Majority: Teplitsky, Carter; dissent: Hassell — 12 pages. (91)

Qualifications — grievor refusing to perform test prepared by the employer; grievor to submit to test and employer to reconsider grievor's application. *Re Tonka Corporation Canada Ltd. & International Molders & Allied Workers Union; Velluso grievance*, June 18, 1982. Teplitsky — 3 pages. (92)

Qualifications — grievor with greater seniority had insufficient experience to assume responsibilities as manager in new store in competent manner; grievance dismissed. *Re Dominion Stores Ltd. & R.W.D.S.U., Loc. 414; Tobin grievance*, June 29, 1982. Majority: Weatherill, White; dissent: McNevin — 6 pages. (93)

#### Retirement

Forced retirement at age sixty-five — management rights provision not supporting application for age-only basis for compulsory retirement; inadequate notice; grievance allowed. *Re Parkwood Hospital (Women's Christian Association of London) & London and District Service Workers' Union, Local 220; Williams grievance*, August 3, 1982. Majority: Baum, Robbins; dissent: Heffernan — 25 pages. (94)

#### Scheduling of Work

Change to four-week rotating schedule which changed occurrence of days off but not hours of work — no violation; grievance dismissed. *Re Holiday Inn of Toronto Downtown & Hotel, Restaurant & Cafeteria Employees Union, Loc. 75; policy grievance*, July 29, 1982. Hearn — 8 pages. (95)\*†

Reduction of hours — no violation of seniority rights where hours of work of senior night maids reduced and offer to bump junior day maids refused; grievance dismissed. *Re Royal York Hotel (Canadian Pacific Hotels Limited) & Hotel, Restaurant and Cafeteria Employees Union, Loc. 75; policy grievance*. See (2), *supra*. (96)\*†

Refusal to allow grievors to work on paid holiday — employer within its rights to do so; grievance dismissed. *Re Marshall Gowland Manor (Corporation of City of Sarnia) & London and District Service Workers' Union, Loc. 220; Arsenault et al grievance*, July 30, 1982. Majority: Saltman, Furlong; dissent: Robbins — 15 pages. (97)

Shifts and hours of work changed to coincide with new hours for operation of amusement rides — guidelines in collective agreement for hours of work followed; grievance dismissed. *Re Thunder Bay, Corporation of City of, & C.U.P.E., Loc. 47; policy grievance*, August 17, 1982. Black — 9 pages. (98)†

Teaching masters required to be at college on non-contact days — requirement deemed to be within right of management's function; grievance denied. *Re Canadore College & O.P.S.E.U.; Dupuis grievance*, July 29, 1982. Majority: O'Shea, Hallsworth; dissent: Bounsal — 23 pages. (99)

#### Transfer

Temporary transfer of more senior grievor — company required by collective agreement to consider able junior employees for such assignments so as to respect grievor's seniority; grievance allowed. *Re Fleet Industries & I.A.M., Lodge 171; Gauvin grievance*, July 7, 1982. Arthurs — 9 pages. (100)

#### Union Officials

Lay-off of plant chairman — no provision for preferred seniority; grievance dismissed. *Re International Harvester Company of Canada Ltd. & U.A.W., Loc. 127; Tindale grievance*, July 21, 1982. Verity — 7 pages. (101)

Provision for special consideration for union stewards in event of lay-off — no inherent meaning equivalent to seniority; past practice inconsistent; grievance dismissed. *Re Bata Footwear Division of Bata Industries Ltd. & U.F.C.W.U., Footwear Division, Loc. 1979; Nappseppa grievance*, July 23, 1982. Devlin — 31 pages. (102)†

#### Vacation Pay

Entitlement where absent from work and in receipt of compensation or payments under welfare plan — actual work during qualifying year requisite; grievance dismissed. *Re Rockwell International of Canada Ltd. & U.A.W.; Howard grievance*, July 20, 1982. Palmer — 6 pages. (103)

Maternity leave — employer erred in pro-rating vacation pay by reason of grievor's absence from work on maternity leave; grievance allowed. *Re Sir Sandford Fleming College & O.P.S.E.U.; Bissonette grievance*, July 9, 1982. Majority: O'Shea, McIntyre; dissent: Hallsworth — 13 pages. (104)\*

#### Wages

C.O.L.A. — no roll-over of C.O.L.A. entitlement from previous collective agreement into present collective agreement; grievance denied. *Re Fort Frances, Town of, & C.U.P.E. Loc. 65; union grievance*, August 3, 1982. Aggarwal — 17 pages. (105)†

Cost of living allowance — base for calculation to be January of previous year; grievance allowed. *Re Canada Metal Company Ltd., Upton Road Plant, & Canadian Chemical Workers Union, Local 2; union policy grievance*, August 13, 1982. Saltman, Borden, Beaulieu — 7 pages. (106)

Error in calculation alleged — company implemented same wage grid as for non-unionized employees as agreed; grievance dismissed. *Re Lambton, Corporation of County of, & C.U.P.E., Loc. 2557; group grievance*, August 2, 1982. Samuels — 9 pages. (107)†

Refusal to remit retroactive wages — previous owner's undertaking does not override agreement; grievance allowed. *Re Garson Manor Nursing Home & C.U.P.E.*, Loc. 2219; union grievance, August 18, 1982. Duchesneau-McLachlan — 9 pages. (108)†

Responsibility allowance — grievor entitled to responsibility allowance as department head, but not at higher level; grievance denied. *Re Bruce County Board of Education & O.S.S.T.F., District 44; Barnes grievance*, July 28, 1982. Weatherill, Cazabon, Filion — 10 pages. (109)

Responsibility allowance — grievor's teaching activity not enough to merit responsibility allowance; grievance denied. *Re Bruce County Board of Education & O.S.S.T.F., District 44; Mielke grievance*, August 27, 1982. Swan, Mangan, Filion — 5 pages. (110)

Bonus payable to "active employees" — grievors absent from work during relevant time period on sick leave — not working, not on active payroll; grievances dismissed. *Re Van Dresser Ltd. & U.A.W.*, Loc. 1524; Herrington, Pysher, LeClair, Keller and Ziffle grievances, July 26, 1982. Brunner — 9 pages. (111)

Cost of living allowance: grievor terminated before issuance of allowance payments — provision for "seniority employees" not a bar — interest payable; grievance allowed. *Re Canadian Canners Ltd. & U.F.C.W.U.*, Loc. P596; Groot grievance, June 4, 1982. Majority: Palmer, Lewis; dissent in part: Simpson — 15 pages. (112)

Cost of living allowance included in employee's rate before calculation of overtime premium; grievance allowed. *Re White Farm Equipment Canada Ltd. & U.A.W.*, Loc. 458; union grievance, July 6, 1982. O'Shea — 12 pages. (113)

Deduction of fifteen minutes pay for failure to punch time clock — grievor familiar with system — no evidence of malfunction; grievance dismissed. *Re Worthington Canada Inc. & I.A.M.*, Loc. 1673; McGlinchey grievance, July 12, 1982. Verity — 12 pages. (114)

Heat causing employees to leave early without agreement of management — no requirement of pay for time not worked; grievance dismissed. *Re Crouse-Hinds Canada Ltd. & U.A.W.; group grievance*, July 5, 1982. Weatherill, Bruce, Filion — 6 pages. (115)

Part-time employee claiming yearly wage increase — provision that minimal total hours be worked; grievance dismissed. *Re Casselholme Home for Aged for District of Nipissing East & C.U.P.E.*, Loc. 146; Gruber grievance, June 30, 1982. H. Brown, Fortin, Butler — 11 pages. (116)

Retroactivity of increment payments in recognition of relevant and recent past experience — not money payment, not retroactive; grievance dismissed. *Re Oaklands Regional Centre & O.N.A.; policy grievance*, July 16, 1982. Majority: Brunner, Sargeant; dissent: Gordon — 12 pages. (117)

Retroactive pay — no entitlement to interest; grievance dismissed. *Re Hamilton-Wentworth, Regional Municipality of, & Civic Employees of I.U.O.E.*, Loc. 772; union grievance, July 21, 1982. O'Shea — 11 pages. (118)\*

Temporary transfer — grievor lacking qualifications to obtain top rate in higher classification; grievance dismissed. *Re Union Gas Ltd. & Canadian Chemical Workers' Union; Apfelbeck grievance*, July 6, 1982. Majority: McLaren, Sanderson; dissent: Lloyd — 9 pages. (119)

### Welfare Plans

Appointment of fund administrator — incumbent re-appointed. *Re Benefit Trust Fund Association Trustees*, Loc. 28, Ontario, & International Union of Bricklayers & Allied Craftsmen, Loc. 28, & Benefit Trust Fund, Loc. 28, Ontario, July 13, 1982. Hearn — 11 pages. (120)

Eligibility — to be determined by insurer; grievance dismissed. *Re Cummins Ontario Ltd. & U.S.W.A.*, Loc. 5390; Robinson grievance, July 12, 1982. Weatherill — 6 pages. (121)

Sick leave credits — no entitlement to credits for probationary period; grievance dismissed. *Re Metropolitan Separate School Board & C.U.P.E.*, Loc. 1280; Sambartolo grievance, July 20, 1982. Majority: M. Picher, Gilfillan; dissent: Young — 8 pages. (122)

Long term disability benefits — benefit calculated by reference to salary level at date of commencement of benefits; grievance allowed. *Re Cambridge, Corp. of City of, & Cambridge Professional Firefighters' Association*, Loc. 499; union grievance, August 24, 1982. Kennedy — 19 pages. (123)

Sick leave — medical complication of pregnancy considered a disability; grievance allowed. *Re Grief Containers Inc. & International Woodworkers of America*, Loc. 2-70; Aide grievance, August 16, 1982. Willes — 13 pages. (124)

Workmen's Compensation suspended when grievor refusing to submit to medical examination — Schedule 1 employer within its right to suspend compensation; grievance denied. *Re Hamilton-Wentworth Regional Board of Commissioners of Police & Hamilton-Wentworth Police Association; Bassett grievance*, August 3, 1982. Adams — 11 pages. (125)

### Work Assignment

Assignment of work outside the bargaining unit — assignment not bringing foreman within unit; grievance denied. *Re Miami-Carey & U.E.*, Loc. 542; Douglas grievance, July 2, 1982. Devlin — 9 pages. (126)†

Elimination of position — employer having right to redistribute work; grievance denied. *Re Miami-Carey & U.E.*, Loc. 542; Bryk grievance, July 1, 1982. Devlin — 21 pages. (127)†

Lead hands alleged to be doing work of grievor's classification — still performing lead hand function; grievance dismissed. *Re MacMillan Bloedel Building Materials Ltd. & International Woodworkers of America*, Loc. 2-700; Sbrocchi grievance, July 16, 1982. Majority: Palmer, Winkler; dissent: Bedard — 6 pages. (128)\*

Millwrights required to rig for another trade — restrictive provisions have no application to trades outside bargaining unit; grievance dismissed. *Re Domtar Packaging, Kraft Paper & Board Division, & Canadian Paperworkers Union*, Loc. 528; Finlayson, Haley and Legacy grievances, undated. Majority: Beatty, Byers; dissent: Stencer — 13 pages. (129)

Outside employee performing bargaining unit work — violation of collective agreement but grievor unable to establish damages; grievance allowed in part. *Re Dominion Stores Ltd., Sudbury, & R.W.D.S.U., Loc. 579; Bedard grievance*, July 20, 1982. Majority: Saltman, Tester; dissent: White — 7 pages. (130)

Past practice of two employees per shift on statutory holidays — change in staff within management discretion; grievance dismissed. *Re Transit Windsor & A.T.U., Loc. 616; policy grievance*, July 12, 1982. Hinnegan — 5 pages. (131)†

Reorganization of job duties among existing job classifications — management having right to organize work force; grievance denied. *Re Dow Chemical of Canada Ltd. & E.C.W.U., Loc. 672; Vanderlinde grievance*, July 21, 1982. Hinnegan — 10 pages. (132)†

Supervisors performing bargaining unit work — work not beyond normal responsibilities of supervisors; grievances dismissed. *Re Burlington Steel, Division of Slater Steel Industries Ltd., & U.S.W.A., Loc. 4752; Barker and Pulsford grievances*, July 23, 1982. Weatherill — 10 pages. (133)

Supervisors performing certain tasks during shut-down; tasks outside collective agreement; grievance dismissed. *Re Weldwood of Canada Ltd., Longlac Division, & Lumber & Sawmill Workers' Union, Loc. 2693; group grievance*, July 27, 1982. Majority: Hinnegan, Holt; dissent: Johnstone — 11 pages. (134)

Foreman alleged to have repaired and remounted a rubber die thereby usurping work of grievor, a die-mounting — not established on evidence; grievance dismissed. *Re Consolidated Bathurst Packaging Ltd. (Hamilton) & International Woodworkers of America, Local 2-69; Tambeau grievance*, August 15, 1982. Jolliffe — 14 pages. (135)†

Foreman assigned work of assembly and loading on trailer for delivery several sofa-beds — bargaining unit work — no emergency; grievance upheld. *Re Simmons Limited & U.E., Loc. 513; policy grievance*, August 18, 1982. Saltman — 5 pages. (136)†

Preferred work assignment claimed by senior employee — not a separate "job"; no entitlement under provisions of collective agreement; grievance denied. *Re Chromasco Ltd. & U.S.W.A., Loc. 4632; Tanguay grievance*, August 20, 1982. O'Shea — 12 pages. (137)

### The Hospital Labour Disputes Arbitration Act

The following interest arbitration awards under *The Hospital Labour Disputes Arbitration Act* were filed with the Office of Arbitration during the months of July and August, 1982.

*Alpha Nursing Home (407066 Ontario Limited) & S.E.I.U., Loc. 204.* Majority: Baum, Lewis; dissent: Graham; addendum: Lewis — 18 pages.

*Baycrest Centre for Geriatric Care & O.P.S.E.U.* Waisglass, Sergeant, Lewis; addendum: Sergeant — 5 pages.

*Chateau Gardens (Hanover) Inc. & London and District Service Workers' Union, Loc. 220.* Majority: Brunner, Robbins; dissent: Perkins — 11 pages.

*Edward Street Manor Nursing Home & O.N.A.* (interim award). Betcherman, Bass, Switzman — 1 page.

*Fairview Nursing Home Inc. Ltd. (St. Thomas) & London and District Service Workers' Union, Loc. 220.* Majority: Ladd, Lewis; dissent to follow: Humphrey — 11 pages.

*Heritage Nursing Home Limited & O.N.A.* (supplementary award). Saltman, Perkins, Mayne — 40 pages.

*Kilean Lodge Incorporated & S.E.U., Loc. 204.* Waisglass, Graham, Lewis; addendum: Lewis — 6 pages.

*Mon Sheong Foundation & C.U.P.E.* Waisglass, Lanigan, Robbins; addendum: Robbins — 7 pages.

*Norfolk Hospital Association of Simcoe & London and District Service Workers' Union, Loc. 220,* (final award). Majority: H. Brown, Robbins; partial dissent: Bass — 13 pages.

*Norview Home for Aged (Regional Municipality of Halton-Norfolk) & London and District Service Workers' Union, Loc. 220.* Swan, Murray, Robbins — 4 pages.

*Ongwanada Hospital, Penrose Division, & O.P.S.E.U., Loc. 433.* V. Scott — 7 pages.

*Palmerston Town Manor & C.U.P.E., Loc. 2037.* Majority: Barton, Humphrey; dissent: Robbins — 21 pages.

*Parry Sound District General Hospital & S.E.I.U., Loc. 478.* Majority: Kruger, Bounsal; dissent: Carrier — 14 pages.

*Participating Hospitals (Renfrew Victoria Hospital) & O.N.A.* (supplementary award). Majority: O'Shea, Winkler; dissent: Paliare; addendum: Winkler — 11 pages.

*Participating Hospitals (St. Vincent Hospital, Ottawa) & O.N.A.* (supplementary award). Majority: O'Shea, Winkler; dissent: Paliare; addendum: Winkler — 11 pages.

*Participating Hospitals (Sudbury General Hospital) & O.N.A.* (supplementary award). Majority: O'Shea, Winkler; dissent: Paliare; addendum: Winkler — 10 pages.

*Participating Hospitals (Sudbury Memorial Hospital) & O.N.A.* (supplementary award). Majority: O'Shea, Winkler; dissent: Paliare; addendum: Winkler — 10 pages.

*Participating Hospitals (Local Issues) & O.N.A.* (supplementary award). V. Scott; partial dissents: Filion, Switzman — 59 pages.

*Pinewood Court (Thunder Bay District Home for Aged) & O.N.A.* (interim award). Betcherman, Holt, McIntyre — 2 pages.

*Salvation Army Grace Hospital, Windsor, & S.E.U., Loc. 210.* Majority: McLaren, Libeskind; dissent: Burnell — 21 pages.

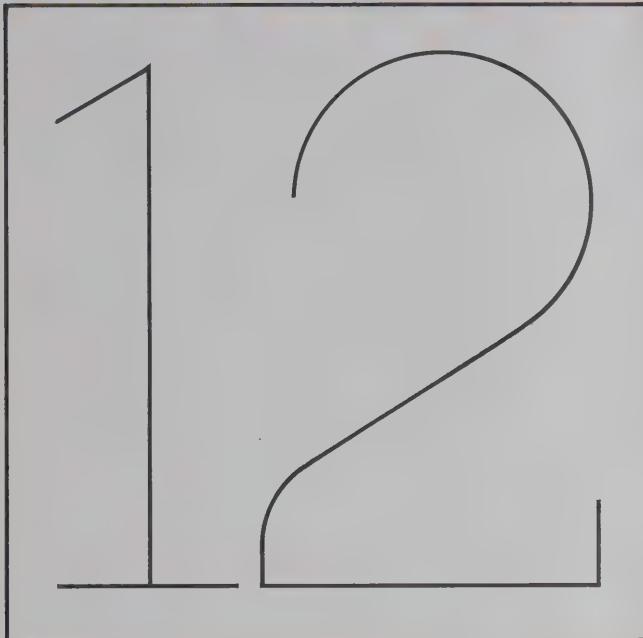
*University Hospital & London and District Service Workers' Union, Loc. 220.* Majority: H. Brown, Mustard; dissent: Robbins — 11 pages.

### Filing Awards

The attention of chairmen of boards of arbitration and sole arbitrators is drawn to the regulations under *The Labour Relations Act* which require every arbitrator to file a copy of his award with the Office of Arbitration within ten days of issuing such award.

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# Monthly Bulletin



Ontario Ministry of Labour



Hon. Russell H. Ramsay, Minister  
T.E. Armstrong, QC, Deputy Minister

Office of Arbitration  
400 University Avenue, 6th Floor  
Toronto, Ontario  
M7A 1T7  
Tel. (416) 965-5669

Miss Jean M. Read, Director

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## Purchase of Awards

All awards listed in the *Monthly Bulletin* may be reviewed at the Office of Arbitration, 400 University Avenue, 6th Floor, Toronto, Ontario, M7A 1T7. Copies may be purchased for a fee of 50¢ per page and orders will be filled upon receipt of a request and a cheque or money order payable to the Treasurer of Ontario, for the applicable amount.

## Appointment of Arbitrators

Forms for requests for appointment of arbitrator under section 45 of *The Labour Relations Act* are available on request, from the Office of Arbitration.

## Grievance Arbitration

The following awards were filed with the Office of Arbitration during the months of August and September, 1982. The summary was prepared under the supervision of C.G. Simmons, B.A., B.C.L., LL.M.; D.D. Carter, B.A., B.C.L., LL.B. and K.P. Swan, P. Eng., LL.B.

\* Indicates award to be reported in full or in part in *Labour Arbitration Cases*.

† Indicates award issued under section 45 of *The Labour Relations Act*.

## Arbitrability

Classification — parties held to have intended that classification of employees be subject to review by arbitration; interim award. *Re Public Service Alliance of Canada & Alliance Employees' Union, Unit 1; group grievance*, August 19, 1982. Abbott — 12 pages. (1)

Effect of conversion from *Public Service Staff Relations Act* to *Canada Labour Code* — does not give "term employee" status to grieve discharge. *Re Canada Post Corporation & Letter Carriers' Union of Canada; Blaney grievance*, September 17, 1982. Kates — 11 pages. (2)

Fairness of work load — committee did not resolve dispute; grievance arbitrable. *Re Niagara College of Applied Arts and Technology & O.P.S.E.U.; Langley grievance*, September 20, 1982. Majority: McLaren, Shields; dissent: Marszewski; addendum: Shields — 14 pages. (3)

## Bargaining Unit

Employees working in same physical plant and under supervision of bargaining unit employees of one company, but paid by another company leasing space in premises, not included in bargaining unit — grievance dismissed. *Re Modular Windows of Canada & U.S.W.A., Loc. 2729; policy grievance*, August 31, 1982. Davis — 7 pages. (4)†

**Classification**

Higher classification claimed — failure to meet onus to show application of wrong classification; grievances dismissed. *Re Westinghouse Canada Inc. & U.E., Loc. 549; six unnamed grievances*, September 14, 1982. Egan — 4 pages. (5)†

**Contracting Out**

Extensive ploughing contract given to tenant farmer — unreasonable and inefficient to use bargaining unit employees in circumstances — did not cause lay-off; grievance dismissed. *Re Rothsay Concentrates Company Limited & E.C.W.U., Loc. 39; policy grievance*, September 9, 1982. Adams — 15 pages. (6)

**Discharge**

Absenteeism — incorrigible alcoholism alleged — not established — recent absences caused by marital breakdown; grievance allowed. *Re Ralston Purina Canada Inc. & U.A.W., Loc. 636; Wright grievance*, September 14, 1982. Samuels — 5 pages. (7)

Absenteeism — progressive discipline imposed — no credible explanation offered; grievance denied. *Re Lustro Steel Products Ltd. & U.A.W.; Jones grievance*, August 24, 1982. Teplitsky — 4 pages. (8)

Accident — grievor not at fault but was dilatory in giving notice to appropriate supervisor — three-day suspension substituted. *Re Motorways Transport Limited & Teamsters, Loc. 879; Burns grievance*, September 8, 1982. MacDowell, Peel, Bartolotti — 20 pages. (9)

Assault upon supervisor — unprovoked and cowardly; injuries severe; grievance dismissed. *Re Loblaw's Limited & U.F.C.W.U.; Atkins grievance*, August 31, 1982. Teplitsky — 6 pages. (10)

Assessment of damages following award ordering reinstatement — principles applicable; supplementary award. *Re Peel County Feed Co. Inc. & Hotel, Restaurant and Cafeteria Employees Union; Saini grievance*, September 23, 1982. Brunner, MacDermid, Tate — 4 pages. (11)

Culminating incident — failure to maintain vigilance during assigned watch — poor past record; grievance dismissed. *Re St. Lawrence Seaway Authority & Canadian Brotherhood of Railway, Transport and General Workers; Cadot grievance*, August 26, 1982. Teplitsky — 4 pages. (12)

Culminating incident — grievor failed to report to work after lunch — grievor found sleeping — poor past record of absenteeism — progressive discipline applied; grievance dismissed. *Re Stelco Inc., Hilton Works, & U.S.W.A., Loc. 1005; Marrone grievance*, September 8, 1982. Majority: Adams, Moran; dissent: Marshall — 10 pages. (13)

Culminating incident — grievor failing to act responsibly; grievance denied. *Re Blackstone Industrial Products Ltd. & U.A.W., Loc. 1132; Dowswell grievance*, September 2, 1982. O'Shea — 14 pages. (14)

Culminating incident — prior final step discipline reduced by arbitrator after incident occurred; reinstatement without compensation. *Re Inco Metals Company & U.S.W.A., Loc. 6500; Campbell grievance*, September 23, 1982. Majority: Hinnegan, Carriere; dissent: Kort — 19 pages. (15)

Drinking on company premises — lack of clear notice of company rule; grievances allowed in part. *Re Stelco Inc., Hilton Works, & U.S.W.A., Loc. 1005; Perks, Bartek, Greenaway and Evanik grievances*, September 3, 1982. Majority: R.J. Roberts, Marshall; dissent: Storie — 24 pages. (16)

Horseplay leading to altercations with fellow employees — discharge not a reasonable response; reinstatement without compensation. *Re Goodyear Canada Inc. & United Rubber Workers of America, Loc. 232; Durcak grievance*, September 10, 1982. H. Brown — 14 pages. (17)

Insubordination: grievor instructed not to use portable radio and earphones while working — insulting, aggressive response — bad disciplinary record; grievance dismissed. *Re St. Catharines, Corporation of City of, & C.U.P.E.; Gibbons grievance*, September 28, 1982. Swan — 8 pages. (18)\*†

Lateness and attitude — most not proven — inconsistency in discipline; reinstatement with partial compensation. *Re J.H. Lock & Sons Ltd. & United Association of Journeymen & Apprentices of Plumbing & Pipefitting Industry, Loc. 787; Bencic grievance*, September 13, 1982. Hearn — 13 pages. (19)†

Misappropriation of company funds alleged — not established. *Re Humpty Dumpty Foods Limited & R.W.D.S.U., Loc. 461; McRoberts grievance*, September 10, 1982. H. Brown — 14 pages. (20)

Misuse of company property alleged: operation of truck with flat tire — no proof that action deliberate; grievance allowed. *Re Tricil Limited & C.U.P.E., Loc. 1045; Thomas grievance*, September 23, 1982. Rose — 5 pages. (21)†

Negligence — grievor's bus collided with train at crossing — substantial property damage; reinstatement on probationary basis. *Re Charterways Transportation Limited & Canadian Brotherhood of Railway, Transport and General Workers Union; Snook grievance*, August 31, 1982. Hearn — 15 pages. (22)†

Non-disciplinary termination — employer relying on policy requiring termination automatically upon exhaustion of sick leave — policy not known to employee; grievance allowed. *Re Peel Memorial Hospital & S.E.U., Loc. 204; Howell grievance*, March 20, 1981. Majority: Ord, Beaulieu; dissent: Stewart — 10 pages. (23)

Possession of illegal drugs on company property — argument of framing not credible; grievance dismissed. *Re Steel Company of Canada Limited & U.S.W.A., Loc. 1005; Piva grievance*, September 8, 1982. Majority: R.J. Roberts, Murray; dissent: Marshall — 16 pages. (24)

Theft of company property — youthful grievor contrite — reinstatement to take effect in one month, no compensation. *Re Carling O'Keefe Breweries of Canada Ltd. & Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers, Loc. 325; Benson grievance*, September 16, 1982. McLaren — 8 pages. (25)\*

Theft of company property being transported in grievor's truck — established on evidence; grievance dismissed. *Re Inter-City Truck Lines (Canada) Inc. & Teamsters, Loc. 938; Atwood grievance*, September 10, 1982. Adams, Bertuzzi, Petryshen — 15 pages. (26)

Theft of hospital property alleged — not established; grievance allowed. *Re Peel Memorial Hospital & S.E.U., Loc. 204; Woode grievance*, September 3, 1982. Majority: Kruger, Lewis; dissent: Bass — 8 pages. (27)

Theft: unauthorized removal of goods from premises — no personal acknowledgement of responsibility; grievance dismissed. *Re Dominion Stores Limited & R.W.D.S.U., Loc. 414; Kellar grievance*, September 27, 1982. Kates — 21 pages. (28)\*

Unauthorized reading of restricted labour relations material — error of judgement — no breach of duty of fidelity; one-week suspension substituted. *Re Storwal International Inc. & U.S.W.A., Loc. 9068; Vansiker grievance*, September 29, 1982. Kates — 7 pages. (29)\*†

Uncooperative and time-wasting conduct — serious incident of inviting non-employees to consume alcohol on premises; grievance dismissed. *Re Brewers Warehousing Company Limited & United Brewers Warehousing Workers Provincial Board; Veitch grievance*, September 8, 1982. Egan — 9 pages. (30)\*†

Union officials participating in illegal strike and picketing — reinstatement ordered and penalty to each grievor assessed; grievances allowed. *Re North York General Hospital & C.U.P.E., Loc. 1692; McKinnon, Poulter, Hollands and DeBono grievances*, March 11, 1982. Majority: Teplitsky, Earle; partial dissent: Lewis — 17 pages. (31)\*

Unnecessary delays while operating company vehicles — grievor thoughtless but not deceitful; grievor to be conditionally reinstated. *Re Bondy Cartage Limited & Teamsters, Loc. 880; Sanford grievance*, September 1, 1982. Majority: MacDowell, Laub; addendum: MacDowell, Laub; dissent: Kavanaugh — 39 pages. (32)

Unsafe driving — company failing to impose corrective discipline in progressive manner; two-week suspension substituted. *Re C.H.T. Steel Company & U.S.W.A., Loc. 7024; Tregebar grievance*, September 8, 1982. O'Shea — 14 pages. (33)

#### Discipline

Absence without leave — good employee — long employment record; grievor's record cleared without compensation. *Re Standard Tube Canada Limited & U.A.W., Loc. 636; Kocsis grievance*, January 20, 1981. Ord — 8 pages. (34)

Assault upon supervisor — supervisor deliberately planned to aggravate grievor — grievor's retaliation in self-defence; grievance allowed. *Re Scarborough Centenary Hospital Association & C.U.P.E., Loc. 1320; Whiteman grievance*, September 23, 1982. Little — 13 pages. (35)\*†

Breach of security and safety regulations — other responsible employees not disciplined; three-day suspension reduced to one-day suspension. *Re Brink's Canada Limited & Teamsters, Loc. 9; Wilson, Sigouin and David grievances*, September 3, 1982. Kates — 11 pages. (36)†

Careless work resulting in damage and risk of harm — three-day suspension justified; grievance denied. *Re John Wood Mfg. Ltd. & U.A.W., Loc. 124; Bonaiuto grievance*, September 8, 1982. Weatherill — 6 pages. (37)

Careless workmanship alleged and established on evidence — poor past record; grievance dismissed. *Re Wellesley Hospital & S.E.U., Loc. 204; Galgano grievance*, September 24, 1982. Burkett, McGuire, Wright — 16 pages. (38)

Careless workmanship — weakness in company's working procedures; two-day suspension reduced to written warning. *Re Westinghouse Canada Inc. & U.E., Loc. 504; Babineau grievance*, September 8, 1982. Devlin — 21 pages. (39)†

Consumption of alcohol at work — denial not credible; grievance dismissed. *Re William Neilson Limited & U.F.C.W.U., Loc. P 529A; Wood grievance*, September 17, 1982. Egan — 7 pages. (40)

Culminating incident — grievor habitually leaving work station; grievance denied. *Re Canadian Canners Limited & U.F.C.W.U.; Bradley grievance*, August 19, 1981. Teplitsky, Simpson, Lewis — 4 pages. (41)

Failure to attend safety meeting — forgetfulness calls for disciplinary response; grievance dismissed. *Re Toronto, Municipality of Metropolitan, & Metropolitan Toronto Civic Employees Union, Loc. 43; Pietrangelo grievance*, September 14, 1982. Kennedy — 10 pages. (42)†

Indefinite suspension pending criminal proceedings for indecent exposure and assault — insufficient evidence of risk to employer's concerns; grievance allowed. *Re Humber Memorial Hospital & C.U.P.E., Loc. 1080; Mancini grievance*, September 23, 1982. Davis — 12 pages. (43)\*†

Insubordination: abusive language and damage to company property — provoked by supervisor; grievance allowed. *Re Confederation Freezers Limited & Teamsters, Loc. 419; Flynn grievance*, September 20, 1982. Brent — 13 pages. (44)

Insubordination: obscene and abusive language directed against supervisor — grievance denied. *Re Labatt's Ontario Breweries & National Brewery Workers' Union, Loc. 1; Spitters grievance*, September 7, 1982. Weatherill — 9 pages. (45)

Leaving work without permission — grievor advised an official of request but did not wait to formalize permission — permission ordinarily granted in such circumstances — suspension reduced to warning. *Re Rio Algoma Limited & U.S.W.A., Loc. 5417; Cote grievance*, August 10, 1982. Palmer — 5 pages. (46)

Neglect of duties — one-day suspension warranted; grievance denied. *Re Eglin Manor & London and District Service Workers' Union, Loc. 220; Markle grievance*, August 31, 1982. Majority: Swinton, Hyde; dissent: Beaulieu; addendum: Swinton — 12 pages. (47)

Unfit to work — grievor's condition result of automobile accident, not too much alcohol; grievance allowed. *Re Consolidated-Bathurst Packaging Limited & International Woodworkers of America, Loc. 2-242; Budai grievance*, September 7, 1982. Majority: Springate, Ballantyne; addendum: Ballantyne; dissent: Earle — 19 pages. (48)

Unsafe driving — thirty-day suspension considered reasonable; grievance denied. *Re Canada Coach Lines Limited & A.T.U., Loc. 107; English grievance*, August 16, 1982. Majority: Palmer, Billings; dissent: Bosnich — 6 pages. (49)

#### Grievance Procedure

Timeliness — extension of time limits allowed but employer not to be responsible for compensation for period of delay by union; grievance arbitrable. *Re Pioneer Chain Saw Corporation Inc. & U.S.W.A.; Nice grievance*, September 29, 1982. Brent, Wace, Curtis — 11 pages. (50)

Timeliness — joint grievance committee declaration not official until all members signed; grievance arbitrable. *Re Bondy Cartage Limited & Teamsters, Loc. 880; Sanford grievance*. See (32), *supra*. (51)

Use of policy grievance to supplement individual grievances — inappropriate. *Re University of Windsor & Faculty Association University of Windsor; four individual grievances and one policy grievance*, September 10, 1982. Gorsky — 54 pages. (52)

#### Holiday Pay

Qualifying days — grievor failed to work on the qualifying day; grievance dismissed. *Re Milton Bradley Canada, Inc. & International Molders' and Allied Workers' Union, Loc. 28; Donnelly grievance*, September 13, 1982. Brent — 4 pages. (53)

Reduction in time off with pay because of time missed due to disciplinary suspension — grievances allowed. *Re Windsor, Corporation of City of, & International Association of Firefighters, Loc. 455; policy and Tousignant grievances*, September 8, 1982. Brunner — 13 pages. (54)

Refusal to pay time off with pay following retirement date — entitlement ends with termination of employment relationship; grievances dismissed. *Re Windsor, Corporation of City of, & International Association of Firefighters, Loc. 455; policy and Tousignant grievances*. See (54), *supra*. (55)

#### Hours of Work

Discipline meeting outside grievor's normal working hours — grievor not "at work" and no entitlement to overtime; grievance denied. *Re Dominion Stores Limited & R.W.D.S.U., Loc. 414; Gaull grievance*, September 10, 1982. Weatherill, Dahmer, Sergeant — 5 pages. (56)

Reduction in regular hours of senior employees — no provision guaranteeing minimum hours; grievance dismissed. *Re Sunnycrest Nursing Home Limited & C.U.P.E., Loc. 152; Molinaro grievance*, September 3, 1982. Rubenstein — 15 pages. (57)†

#### Illness

Delay in allowing return to work following disability — settlement reached; subsequent delay grievor's fault; grievance dismissed in part. *Re United Carr, Division of T.R.W. Canada Ltd. & U.A.W., Loc. 397; Brown grievance*, September 10, 1982. H. Brown — 11 pages. (58)

#### Lay-off

Bumping rights — seniority in skilled trades group plant-wide; grievance dismissed. *Re Standard Tube Canada Ltd. & U.A.W., Loc. 636; union grievance*, September 24, 1982. Houston — 10 pages. (59)†

Plant-wide seniority claimed — job seniority applicable; grievances dismissed. *Re Lake Ontario Steel Co. Ltd. & U.S.W.A., Loc. 65; Turner, Trick, Hughes, Saunders, Gawley and Pearson grievances*, September 8, 1982. Weatherill — 8 pages. (60)

Qualifications — grievor failing to meet qualifications for available work; grievance dismissed. *Re Pamour Porcupine Mines Limited & U.S.W.A., Loc. 4440; Pelchat grievance*, August 30, 1982. O'Shea — 17 pages. (61)

Temporary lay-off alleged by employer — not established; seniority provisions breached; grievance allowed. *Re Philco-Ford of Canada Limited & I.A.M., Loc. 2113; union grievance*, September 24, 1982. Devlin — 12 pages. (62)†

Temporary suspension of work — normal lay-off procedure inapplicable when equipment failure causes emergency situation and unforeseen and temporary suspension of work; grievances dismissed. *Re Union Carbide of Canada Limited & U.E., Loc. 523; Pytlak, Hind and Tworyczuk grievances*, September 24, 1982. Hinnegan — 8 pages. (63)

#### Overtime

Calculation — hours worked for calculation of overtime must be within calendar day; grievance dismissed. *Re Labatt's Ontario Breweries, Division of Labatt Brewing Company Limited (London), & National Brewery Workers' Union, Loc. 1; McCutcheon grievance*, September 17, 1982. Barton — 8 pages. (64)

Consent — union consent in collective agreement to mandatory overtime up to maximum permitted by Ontario law; grievance dismissed. *Re Ralston Purina Canada Inc. & E.C.W.U., Loc. 41; Marshall grievance*, August 25, 1982. O'Connor — 15 pages. (65)†

Entitlement — grievor laid off before foreman was given work grievor could have performed; grievance denied. *Re Cooper Tool Group Limited & U.S.W.A., Loc. 6497; Sanders grievance*, August 31, 1982. Palmer — 5 pages. (66)

Remedy where improper distribution — "in kind" payment not considered an appropriate alternative to monetary payment; grievance allowed. *Re Gulf Canada Products Company, Clarkson, & E.C.W.U., Loc. 593; Aucoin et al grievance*, September 3, 1982. Palmer — 6 pages. (67)\*

#### Premium Pay

Tour differential — premium payable for any hours worked between 1500 and 0700; grievance allowed. *Re Oaklands Regional Centre & O.N.A.; group grievance*, September 14, 1982. Samuels, Beaulieu, Sergeant; addendum: Sergeant — 5 pages. (68)

Weekend work: grievor called in to work weekend and paid regular rate for next working day — premium provisions applicable; grievance allowed. *Re Welland County General Hospital & O.N.A., Loc. 89; Di Martile grievance*, September 23, 1982. Majority: Dunn, Switzman; dissent: Dixon — 6 pages. (69)

#### Promotion

Qualifications — grievor lacking experience requirement reasonably sought by employer for position; grievance dismissed. *Re Arthur S. Leitch Company Limited & U.S.W.A., Loc. 6431; Young grievance*, October 20, 1980. Ord — 8 pages. (70)

Supervisory position — grievor lacking requisite skills; grievance dismissed. *Re Ontario Hydro & Ontario Hydro Employees' Union, Loc. 1000; Tayler grievance*, September 1, 1982. Majority: Swinton, Angus; dissent: McCullough — 17 pages. (71)

Qualifications — grievor less qualified than successful candidate; grievance denied. *Re Abitibi Paper Company Limited & Office and Professional Employees International Union, Loc. 236; Karam grievance*, September 8, 1982. Majority: Jolliffe, Murray; dissent: Olynyk — 21 pages. (72)

Qualifications — grievor not meeting medical requirements; grievance denied. *Re Dupont Canada Inc. & Nipissing Independent Union; Stone grievance*, September 15, 1982. Majority: Gorsky, Binning; dissent: Hayes — 10 pages. (73)

### Scheduling of Work

Change in hours of work and removal of one rest period — violation of *The Employment Standards Act* — estoppel by conduct; grievance allowed. *Re Interforest Limited & International Woodworkers' of America; Wallis grievance*, September 9, 1982. Houston — 12 pages. (74)†

Fairness of work load — resolved by college; no jurisdiction to order compensation. *Re Niagara College of Applied Arts and Technology & O.P.S.E.U.; Langley grievance*, September 20, 1982. See (3), *supra*. (75)

### Seniority

Accumulation outside bargaining unit; supervisors returned to bargaining unit with full seniority — seniority provisions not limited to bargaining unit members; doctrine of estoppel not applicable; grievances dismissed. *Re Canteen of Canada Ltd. (Ontario) & R.W.D.S.U., Loc. 414; Henderson and Hopkins grievances*, September 30, 1982. Devlin — 45 pages. (76)†

Calculation — months worked to be calculated as calendar months; grievance dismissed. *Re Fanshawe College of Applied Arts & Technology & O.P.S.E.U.; Oglesby grievance*, September 20, 1982. Majority: Kruger, Halsworth; dissent: Marszewski — 8 pages. (77)

Departmental seniority — not modified by provision for transfer where possible; grievance dismissed. *Re Ganz Brothers Toys Limited & International Union of Allied Novelty and Production Workers, Loc. 905; Giovannone grievance*, September 23, 1982. Franks — 8 pages. (78)

Seniority groupings unilaterally altered — neither a sufficient operational change nor necessity established by employer; grievance allowed. *Re General Motors of Canada Limited & U.A.W., Loc. 222; policy grievance*, August 30, 1982. Palmer — 12 pages. (79)

Replacement for vacationing employee — seniority applicable; grievance allowed. *Re Chromasco Limited & U.S.W.A., Loc. 4632; Dagenais grievance*, September 8, 1982. Bernstein — 5 pages. (80)†

Temporary replacement of employee while on vacation — supervisor of administrative services an officer and his replacement governed by rank and seniority; grievance allowed. *Re London, Corporation of City of, & London Fire Fighters' Association, Loc. 142; group grievance*, September 17, 1982. Kates — 8 pages. (81)

### Sick Leave

Deduction of appropriate number of days used for sick leave from accumulated sick leave credits — full-time employees to be treated alike whether or not regular or irregular shifts worked; grievance denied. *Re Ottawa Board of Education & Ottawa Board of Education Employees Association; Templeton grievance*, September 27, 1982. Kates, O'Brien, Chodos — 13 pages. (82)

Illness of son: request to have annual leave reinstated and time off regarded as sick leave — sick leave requires grievor to be too ill to perform her duties; entitled to sick leave for only one day. *Re Belleville, Corporation of City of, & C.U.P.E., Loc. 140; McNamara grievance*, August 7, 1982. Willes, Noble, Pearson — 14 pages. (83)

### Successor Rights

Employer in receivership — refusal to remit union dues — receiver not liable for prior obligations of employer; grievances dismissed. *Re Mohawk Industries, Division of McCarthy-Gallagher Limited, Arthur Anderson Inc. (Receiver-Manager), & U.A.W., Loc. 1090; policy grievances*, August 31, 1982. Betcherman — 7 pages. (84)†

### Temporary Employees

Meaning of "aggregate services" — when sum total of time worked aggregated, temporary employee entitled to benefits; grievance allowed. *Re Toronto, Municipality of Metropolitan, & Metropolitan Toronto Civic Employees Union, Loc. 43; Francis grievance*, September 1, 1982. O'Connor — 6 pages. (85)†

### Transfer

Qualifications — grievor possessing necessary qualifications, onus on employer to establish basis of selection; hearing to be reconvened if association not satisfied. *Re Elisabeth Bruyere Health Centre & O.N.A.; Leger grievance*, August 30, 1982. Majority: Saltman, Symes; dissent: Rivet — 9 pages. (86)\*

Senior teachers transferred — retained teacher better met program needs; proper exercise of principal's discretion; grievances dismissed. *Re Wentworth County Board of Education & O.S.S.T.F.; Lieberman et al grievances*, March 2, 1982. Harries, Brown, Pattinson — 10 pages. (87)

Temporary employees seeking positions with permanent status — transfer provisions not applicable; grievances dismissed. *Re Ontario Hydro & Ontario Hydro Employees' Union, Loc. 1000; Thompson and Peterson grievances*, September 14, 1982. Majority: Swinton, Abbott; dissent: McCullough — 14 pages. (88)

### Travel Allowance

Change of reporting centre — travel allowance to reimburse employee for immediate costs of transfer in lieu of notice; grievance dismissed. *Re Bell Canada & Communications Workers of Canada; Yerashotis grievance*, September 24, 1982. Burkett, Churchill-Smith, Beaulieu — 16 pages. (89)

### Union Rights

Special leave given to bargaining unit employees not engaging in strike — discrimination in breach of collective agreement; grievance allowed. *Re Ottawa Civic Hospital & C.U.P.E., Loc. 576; policy grievance*, August 31, 1982. McLaren, Bentley, Lewis — 14 pages. (90)\*

**Union Security**

Guild membership required upon entering bargaining unit — transfers occurring prior to signing of agreement; grievance denied. *Re The Citizen (Division of Southam Inc.) & Newspaper Guild, Loc. 205; union grievance*, August 19, 1982. Majority: Abbott, Dinsdale; dissent: Rupert — 29 pages. (91)

**Vacation Pay**

Illness — pro-rating not permitted by collective agreement; grievance allowed. *Re West Park Hospital (Toronto) & S.E.U., Loc. 204; Micks grievance*, September 10, 1982. Majority: P. Picher, Craven; dissent: Mustard — 15 pages. (92)

Illness: employer deducting twelve days paid vacation leave because grievor was ill and did not work full year — in breach of collective agreement; grievance allowed. *Re Canadore College of Applied Arts and Technology & O.P.S.E.U.; Bell grievance*, September 15, 1982. Majority: Brunner, Beaulieu; dissent: Hallsworth — 12 pages. (93)

**Wages**

Hourly rate mis-stated by employer — not to be repaid; grievance allowed. *Re Fanshawe College of Applied Arts & Technology & O.P.S.E.U.; Oglesby grievance*. See (77), *supra*. (94)

Incentive pay reduced below minimum — misjudgement by time-motion study operator; grievance allowed. *Re Woods Bag & Canvas Co. Ltd. & Canadian Textile and Chemical Union, Loc. 530; Padias grievance*, September 1, 1982. Majority: Ellis, Cornish; dissent: Hassell — 8 pages. (95)

Incentive rate — decline in earnings due to change in production standard — union not putting production standard in issue; grievance dismissed. *Re Hayes-Dana Inc. & U.A.W., Loc. 676; Tanguay and Rainville grievance*, September 20, 1982. Weatherill — 10 pages. (96)

Increment; grievor assigned work and paid at rate of higher classification — time period of assignment not long enough to qualify for increment; grievance dismissed. *Re Public Service Alliance of Canada & Alliance Employees' Union; Perron grievance*, September 9, 1982. Abbott — 16 pages. (97)

Progress through the ranks increment conditional upon normal rate of professional development — employer balanced relevant factors fairly; grievances dismissed. *Re University of Windsor & Faculty Association University of Windsor; four individual grievances and one policy grievance*. See (52), *supra*. (98)

Seasonal employees — entitled to pay rate for higher classification when temporarily reassigned; grievances allowed. *Re Brantford, City of, & Brantford Civic Employees Union, C.U.P.E., Loc. 181; grievances 8-681 and 86-81*, September 9, 1982. Majority: Swan, Maddison; dissent: Hallman — 11 pages. (99)

**Welfare Plans**

Dental plan — no automatic updating of benefits payable stipulated; grievance dismissed. *Re Kirkland Lake Board of Education & Kirkland Lake Division, District 32, O.S.S.T.F. & Kirkland Lake Division, District 5, L'Association Des Enseignants Franco-Ontariens; policy grievance*, March 1, 1981. Harries, O'Connor, Valin — 8 pages. (100)

Extent of obligation to provide death benefit — employer only agreeing to amend insurance policy; grievance dismissed. *Re Ontario Secondary School Teachers' Federation, District 47, & Norfolk Fruit Growers' Association; Estate of Alex Green grievance*, January 13, 1982. Majority: Teplitsky, Coliver; dissent: Ryder — 12 pages. (101)

**Work Assignment**

Bargaining unit member promoted to position outside unit — continued to do bargaining unit work in contravention of collective agreement; declaration appropriate. *Re Johnson Matthey Limited & U.S.W.A., Loc. 9046; policy grievance*, September 10, 1982. Kennedy: dissents: Smeenk, Muselius — 16 pages. (102)

Bargaining unit work done by supervisor and part-time employees — grievor laid off as full-time employee; not prohibited by collective agreement; grievance dismissed. *Re Mike's Food Stores (Hearst) Limited & Lumber and Sawmill Workers' Union, Loc. 2995; Roy grievance*, September 27, 1982. Majority: Barton, Forbes; dissent: Fyshe — 14 pages. (103)

Casual employees employed for longer than one month — no evidence that casual employees displacing regular employees; grievance dismissed. *Re Douglas Memorial Hospital & C.U.P.E., Loc. 1531; policy grievance*, September 20, 1982. Majority: Dunn, Grace; dissent: Bosnich — 5 pages. (104)

Non-bargaining unit employees doing bargaining unit work in excess of 50% of their time following reorganization — declaration and cease and desist order granted; grievance allowed. *Re Sparton of Canada Limited & U.A.W., Loc. 27; policy grievance*, September 23, 1982. McLaren — 17 pages. (105)\*

Temporary assignment — quasi emergency justifying deviation from seniority principle; grievance dismissed. *Re Timmins, Corporation of City of, & C.U.P.E., Loc. 210; Saudino grievance*, September 23, 1982. Dunn, Caldwell, DeGurse — 4 pages. (106)

Temporary reassignment — no seniority rights with respect to work assignments within a job; grievance denied. *Re Labatt's Ontario Breweries, Division of Labatt Brewing Company Limited (London), & National Brewery Workers' Union, Loc. 1; Steele grievance*, August 25, 1982. O'Shea — 19 pages. (107)

Part-time employees — senior part-timers having only limited preference; grievance denied. *Re Dominion Stores Ltd. & Retail, Commercial & Industrial Union, Loc. 206; Malloy grievance*, August 18, 1982. Majority: R.J. Roberts, White; dissent: Thomson — 9 pages. (108)

Student assigned short-term project after regular hours — bargaining unit work; grievance allowed. *Re Ontario Cancer Treatment and Research Foundation — Hamilton Clinic & C.U.P.E., Loc. 794 (Cancer Clinic Clerical Unit); group grievance*, August 23, 1982. H. Brown — 11 pages. (109)

Supervisors performing certain tasks — some supervisors performing bargaining unit work extensively; grievance allowed in part. *Re Irwin Toy Ltd. & U.S.W.A.; policy grievance*, August 20, 1982. Majority: Burkett, Mills; dissent: Sargeant; addendum: Burkett, Mills — 29 pages. (110)\*

Unpaid volunteers overlapping bargaining unit work — no intent or effect of displacement; grievance dismissed. *Re University Hospital & London and District Service Workers' Union, Loc. 220; policy grievance*, July 29, 1982. Carter, Dale, Robbins; addendum: Robbins — 10 pages. (111)

### **Construction Industry Arbitration — Ontario Labour Relations Board**

The following awards were filed with the Office of Arbitration during the months of June, August, September, October, November and December, 1982.

#### **Arbitrability**

Scope of powers of employer bargaining agency — consideration of construction industry scheme and section 143 — no power to compel binding dispute resolution — Board not precluded; to be relisted for hearing on merits. *Re Beckett Elevator Co. Ltd. & International Union of Elevator Constructors, Loc. 50, & National Elevator and Escalator Association (Intervener); union grievance*, September 21, 1982. MacDowell, Hodges, Wilson — 14 pages. (112)

Expiry of collective agreement — grievance filed within time limits after expiry of statutory freeze; grievance arbitrable. *Re Master Insulators' Association of Ontario Inc. and Misco Insulation Co. Ltd. & International Association of Heat and Frost Insulators and Asbestos Workers, Loc. 95; employer grievance*, September 17, 1982. Davis, Cooke, Gibson — 8 pages. (113)\*

#### **Call-in Pay**

Sunday work — paid at applicable overtime rate; call-in pay provisions apply only to regularly scheduled work; grievance dismissed. *Re Ontario Hydro & Ontario Allied Construction Trades Council on behalf of United Brotherhood of Carpenters and Joiners, Loc. 2222; union grievance*, May 7, 1982. Majority: Franks, Bell; dissent: Armstrong — 12 pages. (114)

#### **Collective Agreement**

Concrete and drain agreement incorporates terms of sewer and watermain agreement within it — terms of latter agreement continue to bind employer even in the interval between expiry and renewal of that agreement; grievance allowed. *Re C.D.C. Contracting, Division of Patron Contracting Ltd., & Labourers' International Union, Loc. 183; union grievance*, November 1, 1982. Burkett, O'Keeffe, Ronson — 6 pages. (115)

Violation of project working agreement alleged — not valid collective agreement — sec. 146 considered; grievance not arbitrable. *Re M.J. Guthrie Construction Ltd., & Toronto-Central Ontario Building and Construction Trades Council and seven affiliates; union grievance*, September 27, 1982. Springate, Gibson, Ross — 12 pages. (116)

Signatories not employers at time of voluntary recognition — not bound by agreement; grievance dismissed. *Re Albert's Siding & Sheet Metal Workers' International Association, Loc. 47; union grievance*, July 8, 1982. Springate, Wilson, Rutherford — 9 pages. (117)

Employer bound by provincial agreement — calculation of wages and benefits owing. *Re 462558 Ontario Inc., and Frusino Structure Inc. & United Brotherhood of Carpenters and Joiners, Loc. 2486; union grievance*, July 6, 1982. Franks, Wilson, Ross — 18 pages. (118)

Employer denying that particular agreement subsumed in provincial agreement — employer bound by provincial agreement. *Re Thomas Construction (Galt) Ltd. & Labourers' International Union, Loc. 1081; union grievance*, July 9, 1982. Franks, Bell, Armstrong — 5 pages. (119)

#### **Contracting Out**

Letter of intent — no mandatory requirement that company send its fabrication work to a unionized firm; grievance dismissed. *Re MHG International Ltd. & International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers, Loc. 128; policy grievance*, October 18, 1982. Majority: Springate, Ronson; dissent: Armstrong — 9 pages. (120)

#### **Damages**

Date from which damages assessed — date grievance filed, not date of Board decision; employer aware of risk; no special circumstances existing. *Re Culliton Brothers Ltd. & Ontario Sheet Metal Workers' Conference & Ontario Sheet Metal and Air Handling Group (Intervener); union grievance*, November 10, 1982. Majority: Satterfield, Wightman; concurring opinion: Wightman; dissent in part: Ballentine — 32 pages. (121)

#### **Discharge**

Leaving work station without advising supervisors — grievor giving false testimony; grievance dismissed. *Re Dominion Bridge Co. Ltd. & International Association of Bridge, Structural and Ornamental Ironworkers, Loc. 721; Enwright grievance*, June 21, 1982. Majority: Satterfield, Gibson; dissent: Rutherford — 11 pages. (122)

Poor work performance — conflict of evidence about warning — grievors evidence inconsistent; grievance dismissed. *Re G.M. Gest Inc. & Labourers' International Union, Loc. 183; Succi grievance*, September 10, 1982. Franks, Wilson, Ballantine — 3 pages. (123)

Unauthorized absence from work — discharge not appropriate, grievor's previous good record — lack of candour on both sides — four-week suspension substituted. *Re Tamarron Group Inc. & Labourers' International Union, Loc. 607; Burgstaler grievance*, November 16, 1982. Majority: M. Picher, Armstrong; partial dissent: Murray — 4 pages. (124)

Insubordination and misconduct — no grounds for discipline whatever; reinstatement with compensation. *Re Vanbots Construction & Labourers' International Union, Loc. 506; union grievance*, July 23, 1982. Howe, Redford, Cooke — 8 pages (125)

#### **Estoppel**

Casual conversation — not clear and unequivocal promise intended to affect legal relations — estoppel rejected; grievance allowed. *Re Candesco (1978) Ltd. & United Brotherhood of Carpenters and Joiners, Locs. 27 & 1304; union grievance*, November 8, 1982. Burkett, Kobryn, Bourne — 3 pages. (126)

Union seeking commuting pay for Timmins area residents including mileage and board allowances for Timmins area jobs — past practice recognized by union that mileage only paid; grievance dismissed. *Re Employer Bargaining Agency and its affiliate Comstock International Ltd. & I.U.O.E.*, Loc. 793; union grievance, June 30, 1982. Franks, Wightman, Ross — 4 pages. (127)

Union promise not to appoint grievor as union steward — employer reliance by hiring grievor; declaration that union estopped from appointing grievor as steward. *Re Vanbots Construction & Labourers' International Union*, Loc. 506; union grievance. See (125), *supra*. (128)

#### Procedure

Failure to respond to subpoena — Board's enforcement powers like a civil court's; arrest warrants issued. *Re Mar-ot Painting Contractors Ltd. and Ionview Construction Ltd. & International Brotherhood of Painters and Allied Trades*, Loc. 1891; union grievance, July 22, 1982. MacDowell, Hemsworth, Fenwick — 7 pages. (129)

Service of witnesses — difficulties preventing personal service — substitutional service beyond Board's powers. *Re Readywall Ltd. & Drywall, Acoustic, Lathing and Insulation of United Brotherhood of Carpenters and Joiners*, Loc. 675; union grievance, July 9, 1982. MacDowell, Donnelly, Simon — 6 pages. (130)

#### Related Business

Statutory preconditions exist — sec. 1(4) declaration despite twenty-one year co-existence of union and non-union operations and extension of bargaining rights; employer's actions eroding bargaining rights; grievance allowed. *Re M.J. Guthrie Construction Ltd. & Toronto-Central Ontario Building and Construction Trades Council and seven affiliates*; union grievance. See (116), *supra*. (131)

#### Union Security

Right of union to require discharge of non-members — consequences of non-membership previously uncertain; grievance allowed in part; employees given five days to apply for union membership. *Re Culliton Brothers Ltd. & Ontario Sheet Metal Workers' Conference & Ontario Sheet Metal and Air Handling Group (Intervener)*; union grievance. See (121), *supra*. (132)

#### Work Assignment

Employee not member of bargaining agent — grievance not barred by previous settlement; grievance allowed with damages. *Re Belanger Construction Ltd. & United Brotherhood of Carpenters and Joiners*, Loc. 446; union grievance, May 6, 1982. Franks, Ronson, Armstrong — 3 pages. (133)

Employer's right to hire directly — may hire new first-year apprentices; union required to supply work permit. *Re Master Insulators' Association of Ontario, Inc., and Misco Insulation Co. Ltd., & International Association of Heat and Frost Insulators and Asbestos Workers*, Loc. 95; employer grievance, November 12, 1982. Franks, Wightman, Kobryn — 6 pages. (134)

#### The Hospital Labour Disputes Arbitration Act

The following interest arbitration awards under *The Hospital Labour Disputes Arbitration Act* were filed with the Office of Arbitration during the month of September, 1982.

*Halton Centennial Manor (Regional Municipality of Halton) & C.U.O.E.* Majority: H. Brown, Billings; dissent: Harrison — 19 pages.

*Hanover and District Hospital & London and District Service Workers' Union*, Loc. 220. Saltman; dissents: Cancilla, Beaulieu — 20 pages.

*Nel-Gor Castle Nursing Home & London and District Service Workers' Union*, Loc. 220. Majority: Gorsky, Robbins; dissent: Challis; addendum: Robbins — 14 pages.

*Parry Sound District General Hospital & C.U.O.E.* H. Brown; partial dissent: Baldwin; dissent: Harrison — 20 pages.

*Parry Sound District General Hospital & O.N.A.* (interim award). Saltman, O'Byrne, Goudge; addendum to follow: O'Byrne — 17 pages.

*Parry Sound General Hospital & S.E.U.*, Loc. 210. Majority: Saltman, Lewis; partial dissent: Baldwin; addendum to follow: Lewis — 8 pages.

*Participating Hospitals (12) & London and District Service Workers' Union*, Loc. 220, (part-time) (final award). Saltman; partial dissent: Sargeant; dissent: Robbins — 36 pages.

*Participating Hospitals (Local Issues) & O.N.A.* (supplementary award). V. Scott; partial dissent: Filion; partial dissent to follow: Switzman — 55 pages.

*Participating Hospitals (46) & S.E.I.U. (Central Issues)*. Teplitsky; partial dissents: Sargeant, Lewis — 35 pages.

*Perley Hospital & C.U.P.E.*, Loc. 870. Majority: H. Brown, Pharand; partial dissent: Baldwin — 9 pages.

*Southampton Nursing Home & S.E.U.*, Loc. 210. Majority: Linden, Lewis; dissent: Graham — 21 pages.

*Sunbeam Home & London and District Service Workers' Union*, Loc. 220. Saltman, Sanderson, Robbins; addendum: Robbins — 26 pages.

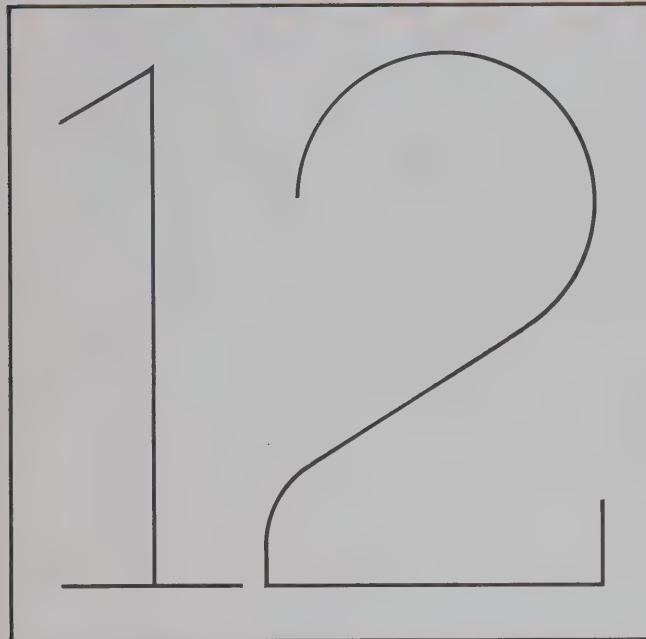
*Sunnydale Home, Sunderland, (Community Nursing Homes Limited) & C.U.P.E.* Majority: Bernstein, Wakely; dissent: Switzman; addendum: Wakely — 17 pages.

#### Filing Awards

The attention of chairmen of boards of arbitration and sole arbitrators is drawn to the regulations under *The Labour Relations Act* which require every arbitrator to file a copy of his award with the Office of Arbitration within ten days of issuing such award.

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# Monthly Bulletin



Ontario Ministry of Labour



Hon. Russell H. Ramsay, Minister  
T.E. Armstrong, QC, Deputy Minister

Office of Arbitration  
400 University Avenue, 6th Floor  
Toronto, Ontario  
M7A 1T7  
Tel. (416) 965-5669

Miss Jean M. Read, Director

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## Purchase of Awards

All awards listed in the *Monthly Bulletin* may be reviewed at the Office of Arbitration, 400 University Avenue, 6th Floor, Toronto, Ontario, M7A 1T7. Copies may be purchased for a fee of 50¢ per page and orders will be filled upon receipt of a request and a cheque or money order payable to the Treasurer of Ontario, for the applicable amount.

## Appointment of Arbitrators

Forms for requests for appointment of arbitrator under section 45 of *The Labour Relations Act* are available on request, from the Office of Arbitration.

## Grievance Arbitration

The following awards were filed with the Office of Arbitration during the month of October, 1982. The summary was prepared under the supervision of C.G. Simmons, B.A., B.C.L., LL.M.; D.D. Carter, B.A., B.C.L., LL.B. and K.P. Swan, P. Eng., LL.B.

\*Indicates award to be reported in full or in part in *Labour Arbitration Cases*.

\*Indicates award issued under section 45 of *The Labour Relations Act*.

## Arbitrability

Breach of benefit obligation — involvement of insurer does not render grievance non-arbitrable. *Re Cryovac Division of W.R. Grace & Co. of Canada Ltd. & C.U.O.E.*, Loc. 101; *Dunkley grievance*, October 24, 1982. Jolliffe — 20 pages. (1)†

Damages for illegal strike — finding of unlawful strike under s.135(1) equivalent to a declaration; board has jurisdiction to deal with damages claim under s.95(1) of *The Labour Relations Act*; objection dismissed. *Re Mechanical Contractors Association of Ontario & United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry*, Loc. 463; union grievance, October 6, 1982. Majority: H. Brown, Foote; dissent: Fyshe — 19 pages. (2)\*

Discharge — standard of just cause implied from language of collective agreement; grievance arbitrable. *Re Motor Employees (Windsor) Credit Union & U.A.W.*, Loc. 240; *Beaton grievance*, October 21, 1982. Gorsky — 15 pages. (3)\*

New classification and job evaluation claimed — rate of pay set out in collective agreement; no longer a new classification giving rise to right to grieve; grievance not arbitrable. *Re Metropolitan Toronto Board of Commissioners of Police & Metropolitan Toronto Police Association; union policy grievance*, October 8, 1982. Saltman — 13 pages. (4)

Prior arbitration — issue estoppel not operative — decision of grievance commissioner on previous grievance of same grievor was on similar issue but different focus — grievance arbitrable. *Re Denison Mines Limited & U.S.W.A.; Loranger grievance*, October 21, 1982. Adams — 19 pages. (5)

Prior arbitration award; grievances raising same issue as dealt with in previous award — correct in principle; substantially same facts applicable; grievances not arbitrable; costs not awarded. *Re Wardair Canada (1975) Ltd. & C.A.L.F.A.; Mitchell and ten others grievances*, October 14, 1982. Jolliffe — 37 pages. (6)

Discharge of probationary employee — no substantive right to grieve in collective agreement; grievance not arbitrable. *Re Catholic Children's Aid Society of Metropolitan Toronto & C.U.P.E., Loc. 2190; Cohlmeyer grievance*, August 27, 1982. Egan — 6 pages. (7)†

Equitability of work assignment — to be dealt with by committee in accordance with preliminary procedure stipulated in collective agreement; jurisdiction reserved to hear merits if no resolution of grievance by committee. *Re Fanshawe College & O.P.S.E.U.; Wilson grievance*, September 21, 1982. Majority: O'Shea, Hubert with partial dissent; dissent: Marszewski — 27 pages. (8)

Settlement — union not allowed to repudiate when grievor not satisfied; settlement to be implemented. *Re Midnorthern Appliances Ltd. & U.S.W.A.; Jackson grievance*, September 17, 1982. O'Shea — 16 pages. (9)

### Bargaining Unit

Reclassification to position outside bargaining unit — no change in duties but within management rights; grievance dismissed. *Re University of Windsor & S.E.I.U., Loc. 210; union policy grievance*, October 25, 1982. Samuels — 12 pages. (10)

Summer students — students within bargaining unit if performing bargaining-unit work; not subcontractors; grievor as senior employee on lay-off ought to have been recalled to do work that student performed. *Re Clare Brothers Limited & International Molders and Allied Workers Union, Loc. 194; Whan grievance*, September 15, 1982. O'Shea — 9 pages. (11)

### Bereavement Leave

Bereavement period coincided with vacation — failure to give immediate notice does not justify company's refusal to pay; grievance allowed in part. *Re GSW, Hill Street site, & U.S.W.A., Loc. 3789; Agar grievance*, October 22, 1982. R.J. Roberts — 13 pages. (12)†

### Bereavement Pay

Failure to attend funeral — entitlement not dependent upon attendance at funeral; grievance allowed. *Re Wabco Limited & U.E., Loc. 558; Singh grievance*, October 19, 1982. O'Connor — 6 pages. (13)†

### Board of Arbitration

Clarification of award sought — new issue raised; board having no jurisdiction. *Re De Havilland Aircraft of Canada Limited & U.A.W., Loc. 112; Barker grievance*, October 14, 1982. Gorsky — 6 pages. (14)

Discretion to extend scope of grievance — wording of grievance pursuant to settlement; available remedy of no assistance to grievor; grievance dismissed. *Re Sudbury Laurentian Hospital & C.U.P.E., Loc. 161; Legault grievance*, September 29, 1982. Teplitsky — 6 pages. (15)

Omission of "retention of jurisdiction" clause — statutory mandate not completed; award clarified. *Re Metropolitan Board of Commissioners of Police & Metropolitan Toronto Police Association; Rawlinson grievance*, October 7, 1982. Welling — 35 pages. (16)

### Classification

Higher classification claimed — not established that criteria met; not board's function to determine if criteria proper; grievances dismissed. *Re Kitchener, Corporation of City of, & C.U.P.E., Loc. 791; Braun et al grievances*, October 21, 1982. Majority H. Brown, Sims; dissent: Richardson — 9 pages. (17)

Higher classification sought — grievor lacking required skill in electronics; grievance dismissed. *Re Canadian Broadcasting Corporation & N.A.B.E.T.; Cox grievance*, October 26, 1982. M. Picher — 27 pages. (18)

Higher classification sought — not established that grievor's duties within core functions of higher level; grievor's skills not dispositive; grievance dismissed. *Re Lambton College & O.P.S.E.U.; Naylor grievance*, October 13, 1982. O'Shea, McManus, Shields — 13 pages. (19)

Scope of job group including millwright classification — no intention to upgrade two employees licensed as millwrights to millwright classification; grievance dismissed. *Re Accurcast Die Casting Limited & International Molders and Allied Workers Union, Loc. 93; policy grievance*, October 5, 1982. R.J. Roberts — 10 pages. (20)

### Contracting Out

Bargaining-unit work performed by outside hiree — not independent contractor but employee; grievances allowed. *Re York Condominium Corporation No. 255 & Labourers International Union, Loc. 183; policy grievance and Pereira grievance*, October 18, 1982. McKechnie — 15 pages. (21)†

Contracting out resulting in lay-offs prohibited — provision not applicable to lay-offs occurring before contracting out; grievance dismissed. *Re Rockwell International of Canada Ltd. & U.A.W., Loc. 127; Reid grievance*, September 24, 1982. Rayner — 12 pages. (22)\*

Lost overtime opportunity — does not amount to "displacement of employees" and notice to union not required; grievance dismissed. *Re Toronto, Corporation of City of, & C.U.P.E., Loc. 43; policy grievance*, October 8, 1982. Kates — 15 pages. (23)

**Demotion**

Inordinate fear of chlorine preventing grievor from performing all his tasks — seniority provisions inapplicable; grievance dismissed. *Re Welland Chemical Limited & E.C.W.U.*, Loc. 914; *Graham grievance*, September 30, 1982. Majority: O'Shea, Hassell; dissent: Pratt — 17 pages. (24)

**Discharge**

Absence without notification — written communication misplaced by company; previous medical report constructive notice; reinstatement with compensation. *Re Cuddy Food Products Limited (London) & U.F.C.W.U.*, Loc. 1105P; *Innialice grievance*, October 22, 1982. Verity — 10 pages. (25)†

Absenteeism — culminating incident stemmed from failure to make every reasonable effort; grievance dismissed. *Re Stelco Inc., Hilton Works, & U.S.W.A.*, Loc. 1005; *Jarvis grievance*, September 29, 1982. Majority: R.J. Roberts, Drmaj; dissent: Marshall — 13 pages. (26)

Absenteeism — evidence not establishing that grievor incapable of providing regular attendance in future; grievance allowed. *Re Canada Post Corporation & C.U.P.W.*; *Potosky grievance*, October 25, 1982. Burkett — 37 pages. (27)\*

Absenteeism — grievor failed to apprise company of his alcoholism; treatment commenced long after termination; grievance dismissed. *Re Falconbridge Nickel Mines Limited & Sudbury Mine, Mill and Smelter Workers Union*, Loc. 598; *Cote grievance*, October 7, 1982. Majority: Linden, Valin; dissent: McIntyre — 6 pages. (28)

Absenteeism — no evidence that grievor warned of termination as consequence of innocent absenteeism; grievance allowed. *Re General Tire Canada Limited & United Rubber Workers*, Loc. 536; *Mitchell grievance*, October 14, 1982. Kennedy, Dinsdale, Collins — 12 pages. (29)\*

Absenteeism — no reasonable expectation of improvement; grievance dismissed. *Re Clare Brothers Limited, Cambridge, & International Molders and Allied Workers Union*, Loc. 194; *Guenard grievance*, October 15, 1982. Verity — 10 pages. (30)†

Absenteeism for medical reasons — progressive discipline not mandatory in light of poor attendance history; grievance denied. *Re Steel Company of Canada Ltd., Hilton Works, & U.S.W.A.*, Loc. 1005; *Hawkins grievance*, October 4, 1982. Majority: Kennedy, Murray; dissent: Marshall — 13 pages. (31)

Absenteeism: absence for two years due to accident — medical evidence of unacceptable risk of return to work; grievance dismissed. *Re Parkwood Hospital & London and District Service Workers' Union*, Local 220; *Skellet grievance*, October 14, 1982. Majority: Linden, Heffernan; dissent: Switzman — 9 pages. (32)

Absenteeism due to injury — reinstatement without compensation on conditions. *Re Aclu Compounds Inc. & U.S.W.A.*, Loc. 8716; *Butt grievance*, October 26, 1982. O'Connor — 5 pages. (33)†

Activities inconsistent with compensation claim — grievor would have been on lay-off anyway; failure to notify regarding discipline; reinstatement without compensation. *Re Worthington Canada Inc. & I.A.M.*; *Brennan grievance*, September 28, 1982. Hearn — 19 pages. (34)†

Assault alleged — assault on supervisor no more than mere touching — inconsistent discipline; reinstatement without compensation. *Re Trans Nation Incorporated (King Edward Hotel) & Hotel, Restaurant and Cafeteria Employees' Union*, Loc. 75; *Russo grievance*, October 7, 1982. M. Picher, Bern, Tate; addendum: Tate — 9 pages. (35)

Assault upon female passenger — previous suspension for similar incident; grievance dismissed. *Re Ottawa-Carleton Regional Transit Commission & A.T.U.*, Loc. 279; *Bazinet grievance*, October 8, 1982. Kates, Emond, Harnden — 10 pages. (36)

Breach of condition concerning absenteeism contained in agreement of conditional reinstatement following previous discharge — evidence establishing breach; grievance dismissed. *Re Falconbridge Nickel Mines Ltd. & Sudbury Mine, Mill and Smelter Workers' Union*, Loc. 598; *Pelletier grievance*, October 26, 1982. Majority: P. Picher, Valin; dissent: McIntyre — 33 pages. (37)

Culminating incident; careless work performance — progressive discipline demonstrated disinterest in improvement; grievance dismissed. *Re Livingston International Inc. & International Woodworkers of America, Local 2-167*; *McCormick grievance*, October 7, 1982. Majority: Kirkwood, Bell; dissent: Bedard — 14 pages. (38)

Culminating incident: lateness — grievor had improved record following final warning; suspension substituted. *Re Firestone Canada Inc. (Hamilton Plant) & United Rubber Workers*, Loc. 113; *Richard grievance*, October 20, 1982. Majority: Saltman, Beaulieu; dissent: Hill — 17 pages. (39)

Indecent disrespect for human remains — employer charged with sacred and profound duty; grievance dismissed. *Re Toronto General Burying Grounds & S.E.U.*, Loc. 204; *unnamed grievance*, October 13, 1982. Knopf — 20 pages. (40)†

Insubordination; refusal to do work assigned — grievor aware of 'work now, grieve later' rule; grievance dismissed. *Re Robertson Building Systems Ltd. & International Association of Bridge, Structural and Ornamental Iron Workers*, Loc. 734; *Yeaman grievance*, October 18, 1982. Majority: H. Brown, Reistetter; dissent: Bosnich — 17 pages. (41)

Intoxication: grievor sent home after found asleep and under influence of alcohol — grievor showing improvement; reinstatement without compensation on conditions. *Re Stelco Inc., Hilton Works, & U.S.W.A.*, Loc. 1005; *Schwartz grievance*, October 26, 1982. O'Connor — 6 pages. (42)†

Neglect of duty alleged — new staged discipline system recently imposed; inequitable to clean records of all employees except grievor, despite his poor work record; grievance allowed. *Re National-Standard Company of Canada Ltd. & U.A.W.*, Loc. 1917; *Alfred grievance*, October 20, 1982. O'Shea — 18 pages. (43)

Termination because of decision to curtail work force — contracting out not a factor; grievance dismissed. *Re York Condominium Corporation No. 255 & Labourers International Union*, Loc. 183; *policy grievance and Periera grievance*. See (21), *supra*. (44)†

Theft of company property alleged — established on evidence — no mitigating factors found; grievance dismissed. *Re Canadian Dressed Meats Ltd. & U.F.C.W.U., Loc. 287; James grievance*, October 12, 1982. Majority: McLaren, Dinsdale; dissent: Kyle — 12 pages. (45)

Work performance — extenuating circumstances — prior discipline related mostly to insubordination; four-month suspension and conditional reinstatement substituted. *Re International Minerals and Chemical Corporation (Canada) Ltd. & U.S.W.A., Loc. 8252; Krzyworaczka grievance*, September 27, 1982. McLaren — 16 pages. (46)†

Culminating incident; grievor absent from work due to his car's mechanical breakdown — failure to notify company promptly; failure to attempt other means of transportation; excessive absenteeism; grievance dismissed. *Re Denison Mines Limited & U.S.W.A.; Pritchard grievance*, September 27, 1982. O'Shea — 14 pages. (47)

Culminating incident; grievor playing cards with unauthorized visitor during working hours at work station — poor past record — progressive discipline applied; grievance dismissed. *Re Diversey Wyandotte Inc. & Canadian Union of United Brewery, Cereal, Soft Drink and Distillery Workers, Loc. 304; Leone grievance*, October 1, 1982. Majority: Springate, Hassell; dissent: Cavalluzzo — 18 pages. (48)

Elimination of grievor's job while on sick leave — upon return grievor unable to perform comparable job because of disability; offers of other suitable jobs refused; grievance dismissed. *Re Crown Cork & Seal Canada Inc. & U.S.W.A., Loc. 8670; Agostinho grievance*, October 8, 1982. Majority: H. Brown, Baldwin; dissent: Naiman — 16 pages. (49)

Fighting between two grievors — tools used as weapons — not a momentary flare-up; grievances dismissed. *Re Pavemaster Division of Dynapac Ltd. & U.S.W.A.; Brett and Lewis grievances*, September 28, 1982. Black — 8 pages. (50)†

Intoxication resulting in intimidation and violence — hope of rehabilitation; company practice of offering treatment; discharge varied to six months suspension on condition that treatment taken. *Re Massey-Ferguson Industries Ltd. & U.A.W.; Rohr grievance*, October 19, 1982. McCulloch — 8 pages. (51)

Misrepresentation of criminal record on employment application — eight years seniority since imprisonment — need to balance societal and employer's interests; reinstatement conditional on receiving pardon. *Re Ralston Purina of Canada Inc. & E.C.W.U., Loc. 4; Rayson grievance*, October 17, 1982. Prichard — 35 pages. (52)\*†

Misrepresentation on employment application: failure to record previous employer and loss of bondable status alleged — real concern previous alleged theft; not proven; grievance allowed. *Re Motor Employees (Windsor) Credit Union & U.A.W., Loc. 240; Beaton grievance*, October 21, 1982. See (3), *supra*. (53)\*

Theft of a carton of chocolates — company policy of prosecution had changed; one-year suspension without pay substituted. *Re Canadian Pacific Airlines Limited & I.A.M., Lodge 764; Lui grievance*, September 10, 1982. Ord, Barnes, Farrell — 17 pages. (54)

Work performance — no culminating incident; grievance allowed. *Re Gap Construction Limited & Teamsters, Loc. 230; Soucie grievance*, October 19, 1982. Majority: O'Connor, Beaulieu; dissent: Braund — 7 pages. (55)

#### Discipline

Absence from work place — contradictory evidence; grievor's story not accepted; grievance dismissed. *Re Stelco Inc., Hilton Works, & U.S.W.A., Loc. 1005; Bianco grievance*, October 18, 1982. Majority: R.J. Roberts, Storie; dissent: Marshall — 9 pages. (56)

Absenteeism — medical certificates not requested; no evidence that absences unjustified; grievance allowed. *Re Keeprite Inc. & Keeprite Workers' Independent Union; Doucette grievance*, September 21, 1982. Majority: Weatherill, Hunter; dissent: Noonan — 10 pages. (57)

Absenteeism resulting in five-day suspension — failure to present credible medical evidence except for two dates; grievance allowed in part. *Re Stelco Inc., Hilton Works, & U.S.W.A., Loc. 1005; Little grievance*, October 15, 1982. Brent, Moran, Marshall — 14 pages. (58)

Altercation with foreman — momentary flare-up — not insubordination; grievance allowed. *Re Tek Plastic Signs Ltd. & United Rubber Workers, Loc. 598; Reesor grievance*, October 7, 1982. Kennedy — 9 pages. (59)

Breach of safety standards — breach of specific safety rule not established but breach of high safety standards expected of motor inspector; grievance dismissed. *Re Stelco Inc., Hilton Works, & U.S.W.A., Loc. 1005; Leger grievance*, October, 1982. R.J. Roberts, Storie, Marshall; addendum: Storie — 15 pages. (60)

Card playing on premises — disciplinary report reasonable; grievances dismissed. *Re Stelco Inc., Hilton Works, & U.S.W.A., Loc. 1005; Filice and D'Angelo grievances*, October 13, 1982. Majority: Brunner, Storie; dissent: Marshall — 11 pages. (61)

Insubordination: breach of company rule prohibiting use of C.B. radios while driving — grievors refusing to acknowledge wrongfulness but past records good; seven-day suspension reduced to five days. *Re Eastern Canadian Greyhound Lines Ltd. & A.T.U., Loc. 1415; Kelly and Hooper grievances*, August 31, 1982. Prichard; dissents: Bartlet, Beaulieu — 20 pages. (62)\*

Insubordination; refusal of direct orders — provocation by foreman; warning substituted for three-day suspension. *Re Canada Packers Inc. & U.F.C.W.U., Loc. 114P; Isaacs grievance*, October 22, 1982. Swan, Lewis, Williamson — 10 pages. (63)

Insubordination — (1) refusal to make a delivery in accordance with management directive not established — one-day suspension removed; (2) failure to make delivery on another occasion and verbal abuse of supervisor established — three-day suspension reduced to two days. *Re Coca-Cola Ltd. & Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers; Berry grievances*, October 5, 1982. Burkett — 17 pages. (64)

Failure to return to work after illness — some inconsistency in discipline; three-day suspension reduced to two days. *Re Toronto, Municipality of Metropolitan, & C.U.P.E., Metropolitan Toronto Civic Employees Union, Loc. 43; Walsh grievance*, October 13, 1982. Carter, Perron, Tate — 8 pages. (65)

Theft of employer's property resulting in eight-day suspensions — employer's failure to discharge onus; grievances allowed. *Re Sunnyside Home, Regional Municipality of Waterloo, & London and District Service Workers Union, Loc. 220; Morris, Stafford and Straker grievances*, May 21, 1982. Majority: Ord, Switzman; dissent: Boehmer — 8 pages. (66)

Unjustified absence alleged — although giving inadequate excuse at time grievor not estopped from raising valid medical reason at hearing; suspension removed from record but no compensation. *Re Stelco Inc., Hilton Works, & U.S.W.A., Loc. 1005; Galivan grievance*, October 15, 1982. Majority: R.J. Roberts, Marshall; dissent: Dunsmore — 12 pages. (67)

#### **Estoppel**

Detrimental reliance on union agreement to change in holiday compensation — union estopped from grieving. *Re Westinghouse Canada Inc. & U.E., Loc. 569; Stach and others grievances*, October 12, 1982. Majority: Weatherill, Kacur; dissent: Russell — 11 pages. (68)

Right to 'sign off' jobs — past practice not established; no estoppel; grievance dismissed. *Re Inter-Bake Foods Ltd. & American Federation of Grain Millers International Union; union policy grievance*, October 15, 1982. Saltman, Werry, Lewis; addendum: Lewis — 5 pages. (69)

#### **Evidence**

Admissibility of evidence of misrepresentation leading to settlement during grievance procedure — ruled admissible. *Re Budd Canada Inc. & U.A.W., Loc. 1451; Green grievance*, October 13, 1982. Gorsky — 6 pages. (70)

#### **Grievance Procedure**

Timeliness — employer deemed to have waived right to object; grievance arbitrable. *Re Thunder Bay, Corporation of City of, & C.U.P.E., Loc. 87; union policy grievance*, October 8, 1982. Black — 11 pages. (71)†

Timeliness — time running from when grievor becomes aware of actual breach and not of employer's intention; grievance timely. *Re Halton-Norfolk Regional Board of Commissioners of Police & Halton-Norfolk Police Association; Mackie grievance*, September 29, 1982. McLaren — 10 pages. (72)

Timeliness — union's delay caused by misunderstanding with company official; no substantial prejudice; grievance arbitrable. *Re Intercity Ford Sales Limited & I.A.M., Lodge 1120; union grievance*, October 1, 1982. Majority: Phillips, Mazur; dissent: Jones — 8 pages. (73)

#### **Holidays**

Rescheduling of holiday — failure of employer to agree with teachers; not a breach of 'effort to maintain a harmonious relationship'; grievance dismissed. *Re Hamilton City Board of Education & O.S.S.T.F., District 8; union policy grievance*, October 7, 1982. Teplitsky, Paulin, Harwood — 6 pages. (74)

#### **Holiday Pay**

Calculation of amount owing to grievor for hours worked on civic holiday — company calculation correct; grievance dismissed. *Re Canadian Carborundum Company Limited & U.S.W.A., Loc. 4151; Smith grievance*, October 19, 1982. Majority: O'Connor, McKerral; dissent: Summers — 4 pages. (75)

Qualifying days — grievors on lay-off did not meet qualifying provision for holiday pay for laid-off employees; grievance dismissed. *Re Becker Lay-Tech Inc. & United Rubber Workers, Loc. 67; Webb and group grievance*, September 20, 1982. Majority: Adams, Johnson; dissent: Duguay — 13 pages. (76)

Qualifying days — grievors absent from work and receiving sick pay on qualifying days — qualifying shifts objectively worded; no exception for employees absent because of illness; grievance dismissed. *Re Dover Corporation (Canada) Limited, Turnbull Elevator Division, & I.A.M., Loc. 1257; group grievance*, October 26, 1982. Majority: Howe, Ruttan; dissent: Hodges — 27 pages. (77)

Qualifying days — scheduled vacation occurring after lay-off and immediately before holiday — employees recalled after holiday entitled to holiday pay; grievance allowed. *Re Nestle Enterprises Ltd. & R.W.D.S.U., Loc. 488; policy grievance*, October 4, 1982. O'Shea — 12 pages. (78)\*

#### **Illness**

Refusal to recall after absence due to medical disability — conflicting medical opinions, refusal reasonable; grievance dismissed. *Re Collingwood Shipyards, Division of Canadian Shipbuilding and Engineering Ltd., & U.S.W.A., Loc. 6320; Good grievance*, October 18, 1982. Verity — 10 pages. (79)†

#### **Interpretation**

Ambiguity in bereavement pay provisions — extrinsic evidence allowed to show common mistake; grievance dismissed. *Re Hoover Company Ltd. & U.E., Loc. 520; Bilyj grievance*, September 24, 1982. Majority: Weatherill, Storie; dissent: Bosnich — 15 pages. (80)\*

#### **Job Evaluation**

New equipment — new classification not established — posting not necessary; grievance dismissed. *Re Thunder Bay, Corporation of City of, & C.U.P.E., Loc. 87; union policy grievance*, October 8, 1982. See (71), *supra*. (81)†

Senior maintenance technician regularly assigned operational functions on colour pac remote unit — no longer performing primarily maintenance functions; new job description and scale of remuneration ordered to be produced; interim award. *Re Canadian Broadcasting Corporation & N.A.B.E.T.; group grievance*, October 14, 1982. P. Picher — 31 pages. (82)

#### **Job Posting**

Job not classified in wage schedule — "Key Man" — still a promotion and posting required; grievance allowed. *Re Steinberg Inc. & Commercial Workers Union, Loc. 486; union policy grievance*, October 20, 1982. Saltman — 9 pages. (83)

**Lay-off**

Entire bargaining unit laid off but some bargaining-unit work performed by non-unit personnel — lay-off of entire unit unjustified; grievances allowed in part. *Re London Humane Society & C.U.P.E., Loc. 101; policy grievances*, October 16, 1982. Rose — 29 pages. (84)†

Improper motive alleged — not established that employer used lay-off as tactic to force wage roll-backs; grievance dismissed. *Re Midland, Town of, & I.A.F.F., Midland Professional Firefighters' Association; Toole and Ironside grievance*, October 19, 1982. Prichard — 11 pages. (85)

Qualifications — grievor did not have skills and ability to perform available job; grievance dismissed. *Re Westinghouse Canada Inc. & U.E., Loc. 547; Rowsell grievance*, October 26, 1982. O'Connor — 6 pages. (86)†

Qualifications — grievor lacking skills for work available; grievance dismissed. *Re Crothers Limited & U.A.W.; Dickson grievance*, September 15, 1982. Palmer — 6 pages. (87)

Qualifications — junior employees recalled before grievor — grievor unqualified to perform work; grievance dismissed. *Re Clare Brothers Limited & International Molders and Allied Workers Union, Loc. 194; Wagner grievance*, September 15, 1982. O'Shea — 8 pages. (88)†

Senior employee not chosen to fill vacancy created by lay-off — to be filled from surplus list instead; grievance dismissed. *Re Storwall International Inc. & U.S.W.A., Loc. 3257; Buder grievance*, October 25, 1982. Bernstein — 9 pages. (89)†

Vacation shutdown — not a lay-off; senior employee having no claim to work assigned during shutdown; grievance denied. *Re Canadian General Electric Company Limited & U.E., Loc. 599; Keen grievance*, October 21, 1982. Majority: H. Brown, Byers; dissent: Hutchens — 11 pages. (90)

**Leave of Absence**

Refusal to grant educational leave with pay but unpaid leave granted — discrimination only an issue if no leave granted; grievance dismissed. *Re Windsor Western Hospital Centre Inc. & O.P.S.E.U., Loc. 143; Ross grievance*, October 27, 1982. Majority: Saltman, Bartlet; dissent: McIntyre — 8 pages. (91)

**Overtime**

Distribution — employee on temporary assignment deemed to be 'working on the job'; grievance dismissed. *Re International Wallcoverings, Division of International Paints (Canada) Ltd. & Canadian Paperworkers Union, Loc. 305; Costigan grievance*, April 29, 1982. Majority: Teplitsky, Brisbin; dissent: Weisbach — 7 pages. (92)

Distribution — grievor had less overtime to credit and no compelling reason to offer it to other employee; grievance allowed and compensation ordered. *Re Rio Algom Ltd. & U.S.W.A., Doyle grievance*, October 25, 1982. O'Shea — 7 pages. (93)

Distribution — to be among 'crew' and those who normally perform work; grievor with fewer overtime hours did not meet either criterion; grievance dismissed. *Re Rio Algom Ltd. & U.S.W.A., Loc. 5417; Hamilton grievance*, October 8, 1982. O'Shea — 15 pages. (94)

Entitlement — grievor did not normally perform work in question — no requirement in collective agreement to assign overtime by seniority; grievance dismissed. *Re Cooper Canada Limited, Hespeler Manufacturing Division, & International Woodworkers of America, Loc. 2-136; Springall grievance*, October 8, 1982. Brunner — 9 pages. (95)

**Premium Pay**

Entitlement — grievor entitled to premium pay for hours worked on day that otherwise would have been holiday during Christmas shutdown; grievance allowed. *Re Becker Lay-Tech Inc. & United Rubber Workers, Loc. 67; Noble grievance*. See (77), *supra*. (96)

**Procedure**

Motion to adjourn pending Divisional Court decision — no prejudice to employer's position; motion refused. *Re Metropolitan Board of Commissioners of Police & Metropolitan Toronto Police Association; Rawlinson grievance*. See (16), *supra*. (97)

**Promotion**

Disputed position outside bargaining unit — collective agreement provisions inapplicable; grievance dismissed. *Re Toronto, Municipality of Metropolitan, & C.U.P.E., Metropolitan Toronto Civic Employees Union, Loc. 43; Gould grievance*, September 28, 1982. Majority: O'Shea, Baker; dissent: Tate — 17 pages. (98)

Qualifications — assessment of grievor's ability unreasonable; grievance allowed. *Re Chromasco Limited & U.S.W.A., Loc. 4632; Kinsella grievance*, October 17, 1982. Fraser — 9 pages. (99)†

Qualifications — evidence established that grievor's qualifications relatively equal to incumbent's — grievor more senior; grievance allowed. *Re Bank of Montreal, Tweed Branch, & Commercial Workers Union, Loc. 486; Dowling grievance*, October 4, 1982. Majority: Carter, McCormick; dissent: Lanigan — 13 pages. (100)\*

Qualifications — no evidence of employer's failure to give proper consideration to qualifications, experience and seniority of the grievor; grievance dismissed. *Re George Brown College & O.P.S.E.U.; Morfetas grievance*, September 30, 1982. Majority: O'Shea, Shuttleworth; dissent: Perrin — 9 pages. (101)

Qualifications — secretarial position — grievor senior, but lacking requisite qualifications; grievance dismissed. *Re Cornwall, Corporation of City of, & O.P.E.I.U., Loc. 452; Sauve grievance*, September 28, 1982. Majority: Abbott, Whittaker; dissent: Tremblay — 14 pages. (102)

Qualifications — senior applicant did not satisfy posted educational requirement but had equivalent qualifications — employer's failure to consider all relevant factors; fresh determination ordered. *Re Mini-Skools Limited & O.P.S.E.U., Locs. 216 and 253; Jorgensen grievance*, October 6, 1982. Majority: Saltman, Walsh; dissent: Smeenk; addendum: Saltman, Walsh — 22 pages. (103)

Qualifications — testing did not demonstrate junior employee's substantial superiority; grievance allowed. *Re Windsor, Corporation of City of, & C.U.P.E., Loc. 543; Breschuk grievance*, October 8, 1982. Hinngan — 12 pages. (104)†

Refusal of position unless grievor rescheduled vacation — no mention of immediacy in job posting; grievance allowed. *Re Seaway/Midwest Ltd. & Teamsters, Loc. 419; Davies grievance*, September 30, 1982. Devlin — 16 pages. (105)\*†

Request for vacation not constituting refusal of position; decision not to promote other grievor to temporary position ignoring her experience; grievances allowed. *Re Twin Oaks Industrial Credit Union Ltd. & O.P.E.I.U., Loc. 290; Flemington and Joseph grievances*, October 19, 1982. Adamson — 12 pages. (106)†

#### Scheduling of Work

Unilateral introduction of new shift — provision for maintenance of standards not a freeze provision; grievance dismissed. *Re Thibodeau-Finch Express Limited & Teamsters, Loc. 880; union grievance*, October 4, 1982. Majority: Brent, Linder; dissent: Laub — 15 pages. (107)

#### Seniority

Departmental seniority governing promotion — grievors less senior; grievances dismissed. *Re C & M Products Limited & U.S.W.A., Baksh and Barker grievances*, October 12, 1982. Weatherill — 8 pages. (108)

Foremen transferred back into bargaining unit — credited with total seniority; greater than that of persons on the job; grievance dismissed. *Re International Harvester Canada Limited & U.S.W.A., Loc. 2868; policy grievance*, September 14, 1982. Palmer, Corbett, Hynd — 8 pages. (109)

#### Successor Rights

Grievance arising prior to sale of business — successor employer bound; grievance allowed. *Re Intercity Ford Sales Limited & I.A.M., Lodge 1120; union grievance*. See (74), *supra*. (110)

#### Transfer

Chief clerk performed duties of grocery department manager while latter on vacation — no transfer because required as part of normal job description; grievance dismissed. *Re Dominion Stores Limited & Retail, Commercial and Industrial Union, Loc. 206 of U.F.C.W.U.; Lediard grievance*, October 27, 1982. Majority: Brunner, Brown; dissent: Rudrum — 9 pages. (111)

#### Travel Allowance

Entitlement — grievor not assigned to new reporting centre but transferred at his request to location closer to home; grievance dismissed. *Re Bell Canada & Communication Workers of Canada; Misler grievance*, March 1, 1982. Majority: Shime, Caron; dissent: Robbins — 13 pages. (112)

Transfer — grievor entitled to mileage allowance since new posting not requiring grievor to take up residence; grievance allowed. *Re Haldimand-Norfolk Regional Board of Commissioners of Police & Haldimand-Norfolk Police Association; Mackie grievance*, September 29, 1982. See (72), *supra*. (113)

#### Union Rights

Distribution of membership cards — collective agreement prohibited union activities during working hours on company premises; grievances denied. *Re Cable Tech Wire Company Limited & I.B.E.W., Loc. 1590; policy grievances*, October 22, 1982. Dunn, Brady, Wacheski — 4 pages. (114)

Super seniority — conditional upon skill and ability; grievances dismissed. *Re Weightech Group & I.A.M., Lodge 235; McAleane and group grievances*, October 4, 1982. Betcherman — 12 pages. (115)†

Super seniority — union stewards entitled to exercise preferential seniority rights only in subarea for which they are responsible; no error in lay-off; grievance dismissed. *Re Gunther Mele (1976) Limited & International Woodworkers of America, Loc. 2-233; policy grievance*, October 19, 1982. Majority: Saltman, Carrier; dissent: Sachs — 9 pages. (116)

Super seniority — plant chairman entitled to be retained rather than laid off; committee members and trustee not entitled. *Re White Farm Equipment Canada Limited & U.A.W., Loc. 458; union grievances*, September 20, 1982. Palmer — 9 pages. (117)

#### Vacation Pay

Calculation — absences because of sickness or accident deemed to be 'hours worked' for qualification but not for purposes of 'deemed earnings'; grievance dismissed. *Re Canada Machinery Division of Ingersoll Rand Canada Inc. & U.S.W.A., Loc. 2905; Hanks grievance*, October 27, 1982. O'Shea — 8 pages. (118)

Entitlement while on compensation — not an 'employee on payroll' during years in question; grievance dismissed. *Re S.K.D. Manufacturing Co. Ltd. & U.A.W., Loc. 89; Chouinard grievance*, October 12, 1982. Weatherill — 11 pages. (119)\*

Payment of 13% of wages to part-time employees inclusive of statutory requirement as to vacation pay — grievance dismissed. *Re Golden Manor Home for the Aged (City of Timmins) & C.U.P.E., Loc. 1140; group grievance*, October 15, 1982. Majority: Dunn, Caldwell; dissent: Sheppard — 7 pages. (120)

#### Wages

Cost of living allowance — based on money actually earned in previous years and not on gross entitlement; grievance dismissed. *Re Norfolk Board of Education & O.S.S.T.F., District 47; policy grievance*, October 21, 1982. P. Picher, Wright, Ryder — 21 pages. (121)

Denial of annual increment to temporary employees — increment provisions applicable; grievance allowed. *Re Windsor, Corporation of City of, & C.U.P.E.; policy grievance*, October 12, 1982. McLaren — 12 pages. (122)†

Incentive pay for taking inventory — not addressed in collective agreement; grievance denied. *Re Ferranti-Packard Transformers Ltd. & U.S.W.A., Loc. 5788; group grievance*, July 27, 1982. Majority: Teplitsky, Storie; dissent: Wadden — 5 pages. (123)

#### Welfare Plans

Company refusal to absorb increases in health insurance premiums — not required by collective agreement; grievance dismissed. *Re Anchor Cap & Closure Corp. of Canada & U.E., Loc. 512; union grievance*, October 27, 1982. Houston — 12 pages. (124)†

Dental plan — employer required by terms of agreement to pay full cost of plan for all employees notwithstanding duplication of coverage in some cases. *Re Employing Printers Association of City of Windsor & Graphic Arts International Union, Loc. 517; policy grievance*, October 12, 1982. Kennedy — 5 pages. (125)

Entitlement to sickness and accident benefits when on maternity leave — no insurable wages; grievance dismissed. *Re Canteen of Canada Ltd. & R.W.D.S.U., Loc. 414; Dunphy grievance*, October, 1982. Majority: McLaren, Nielsen; dissent: Dahmer — 13 pages. (126)

Entitlement to sickness and accident benefits where temporary lay-off — policy deemed employment continuing on temporary lay-off; grievance allowed. *Re Allied Chemical Canada Ltd. & U.A.W., Loc. 89; Cote grievance*, October 8, 1982. Samuels — 8 pages. (127)

Requirement of proof of entitlement in plan — collective agreement rested eligibility on different factors; eligibility and entitlement different, requirement reasonable; grievance dismissed. *Re Cryovac Division of W.R. Grace & Co. of Canada Ltd. & C.U.O.E., Loc. 101; Dunkley grievance*. See (1), *supra*. (128)†

#### **Work Assignment**

Assignment of work outside bargaining unit — group grievance allowed in part, damages awarded. *Re Weightech Group & I.A.M., Lodge 235*. See (117), *supra*. (129)†

Bargaining-unit work done by management personnel while grievor on partial lay-off — amount of such work not substantially increased from past practice; grievance dismissed. *Re Holiday Inn of Don Valley & Hotel and Club Employees' Union, Loc. 75; Allen grievance*, September 24, 1982.

Majority: Weatherill, Parker; dissent: Tate — 10 pages. (130)

Elimination of job following strike — good-faith business decision to remove position — grievor retains rights of employee on lay-off; grievance dismissed. *Re Royal Connaught Hotel, operated by Citicom Inc., & Hotel and Restaurant Employees Union, Loc. 756; DiSaverio grievance*, October 18, 1982. Verity — 9 pages. (131)†

Management rights — company entitled to assign to and re-assign from grievor certain duties as dispatcher and supervisor; grievance dismissed. *Re Crothers Limited & U.A.W.; Price grievance*, September 27, 1982. Majority: O'Shea, Bertuzzi; dissent: Connell — 9 pages. (132)

Managers performing alleged bargaining-unit work during strike — plant security duties previously contracted out; not bargaining-unit work; grievance dismissed. *Re Massey-Ferguson Industries Limited & U.A.W., Locs. 439 and 458; union policy grievance*, October 22, 1982. Swan — 10 pages. (133)

Small percentage of bargaining-unit work done by non-unit personnel — no prohibitive provision; grievance dismissed. *Re Wabco Ltd. & U.E., Loc. 559; union grievance*, October 1, 1982. Majority: Hinngan, Mathews; dissent: Bosnich — 17 pages. (134)

Training and assessing probationary employees — not within grievors' job description; grievance allowed. *Re Scarborough Corporation of Borough of, & I.A.F.F., Loc. 1626; Scarborough Professional Fire Fighters Association; group grievance*, October 26, 1982. Brunner — 10 pages. (135)

Use of non-bargaining unit employees for bulk removal of goods prior to expected strike — not bargaining-unit work; grievance denied. *Re Honeywell Ltd. & U.A.W., Loc. 80; group grievance*, September, 1982. Majority: H. Brown, White; dissent: Bruce — 14 pages. (136)

#### **The Hospital Labour Disputes Arbitration Act**

The following interest arbitration awards under The Hospital Labour Disputes Arbitration Act were filed with the Office of Arbitration during the month of October, 1982.

*Alpha Nursing Home (407066 Ontario Limited) & S.E.I.U., Loc. 204*, (supplemental statement of clarification). Baum, Graham, Lewis — 2 pages.

*Komoka Nursing Home, Ltd., & S.E.I.U., Loc. 220, (full-time)*. Majority: Baum, Robbins; dissent: Valin — 12 pages.

*Maitland Manor Ltd. & S.E.U., Loc. 210*. Prichard, Rhinelander, Lewis; addendum to follow: Lewis — 17 pages.

*John Noble Home & O.N.A. Ord*; addendum: Mayne; dissents: Paterson, Mayne — 14 pages.

*Participating Hospitals (46) & S.E.I.U. (Central Issues)* (supplementary award). Majority: Teplitsky, Lewis; dissent: Sargeant — 6 pages.

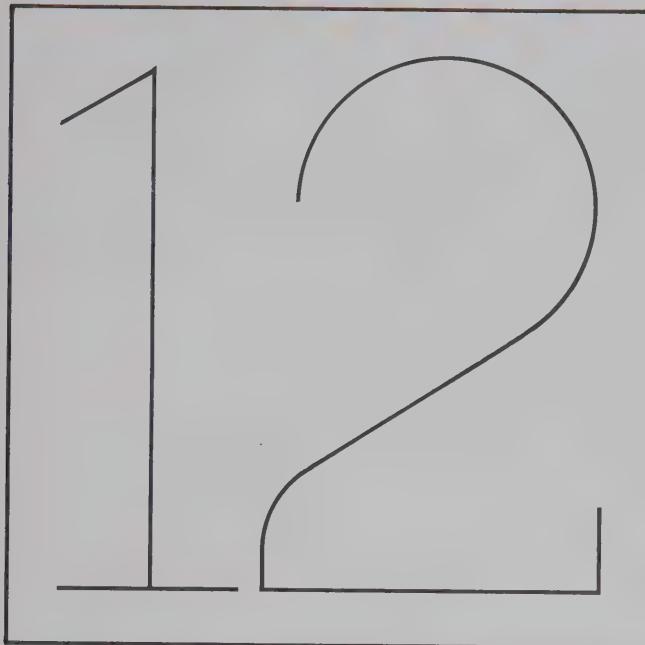
*Participating Hospitals (46) & S.E.I.U. (Central Issues)* (supplementary award). Teplitsky, Sargeant, Lewis; addendum: Sargeant — 6 pages.

#### **Filing Awards**

The attention of chairmen of boards of arbitration and sole arbitrators is drawn to the regulations under *The Labour Relations Act* which require every arbitrator to file a copy of his award with the Office of Arbitration within ten days of issuing such award.

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# Monthly Bulletin



Ontario Ministry of Labour



Hon. Russell H. Ramsay, Minister  
T.E. Armstrong, QC, Deputy Minister

Office of Arbitration  
400 University Avenue, 6th Floor  
Toronto, Ontario  
M7A 1T7  
Tel. (416) 965-5669

Miss Jean M. Read, Director

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Office of Arbitration as a service to  
persons involved in labour-management  
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## Purchase of Awards

All awards listed in the *Monthly Bulletin* may be reviewed at the Office of Arbitration, 400 University Avenue, 6th Floor, Toronto, Ontario, M7A 1T7. Copies may be purchased for a fee of 50¢ per page and orders will be filled upon receipt of a request and a cheque or money order payable to the Treasurer of Ontario, for the applicable amount.

## Appointment of Arbitrators

Forms for requests for appointment of arbitrator under section 45 of *The Labour Relations Act* are available on request, from the Office of Arbitration.

## Approved Arbitrators

The following persons have successfully completed the Ministry of Labour's 1982 Arbitrator Development Programme and have been added to the approved panel of arbitrators:

Mrs. Jane E. Emrich, Barrister and Solicitor, 8 Couper Street, Kingston, Ontario, K7L 2M2; telephone (613) 542-9507.

Professor Ian A. Hunter, Faculty of Law, University of Western Ontario, London, Ontario, N6A 3K7; telephone (519) 679-2990.

Mr. Samuel Lerner, Q.C., 80 Maple Street, London, Ontario, N6A 4G4; telephone (519) 672-4131.

Professor J. Noel Lyon, Faculty of Law, Queen's University, Kingston, Ontario, K7L 3N6; telephone (613) 547-5860.

Mr. Thomas H. Wilson, Barrister and Solicitor, 70 Bond Street, Suite 200, Toronto, Ontario, M5B 1X3; telephone (416) 363-0249

The following person has also been added to the Minister of Labour's panel of approved arbitrators:

Mr. Claude H. Foisy, Q.C., Barrister and Solicitor, 305 Monmouth Avenue, Town of Mount Royal, Quebec, H3P 2B3; telephone; Toronto Line (416) 283-2136; Montreal Line (514) 733-2460.

## Change of Address

The following changes should be noted, effective immediately:

Mrs. Maureen K. Saltman, Barrister and Solicitor, 70 Bond Street, Suite 200, Toronto, Ontario, M5B 1X3; telephone (416) 367-1417 (unchanged).

Mr. Owen B. Shime, Q.C., 70 Bond Street, Suite 200, Toronto, Ontario, M5B 1X3; telephone (416) 366-8009 (unchanged).

Professor Joseph W. Samuels, 281 Commissioners Road East, London, Ontario, N6C 2T3; telephone (519) 679-3352 or (519) 679-3605 (unchanged).

### Grievance Arbitration

The following awards were filed with the Office of Arbitration during the month of November, 1982. The summary was prepared under the supervision of C.G. Simmons, B.A., B.C.L., LL.M.; D.D. Carter, B.A., B.C.L., LL.B. and K.P. Swan, P. Eng., LL.B.

\* Indicates award to be reported in full or in part in *Labour Arbitration Cases*.

† Indicates award issued under section 45 of *The Labour Relations Act*.

### Arbitrability

Non-disciplinary discharge: fitness to perform work — grievance arbitrable. *Re Carrier Air Conditioning (Canada) Ltd. & Sheet Metal Workers Association*, Loc. 575; *Brinovec grievance*, Nov. 3, 1982. Davis — 16 pages. (1)†

Settlement alleged — company reduced penalty at third level and grievor returned to work; no indication of acceptance as settlement; grievance arbitrable. *Re Brass Craft Canada Ltd. & I.A.M., Lodge No. 2446; Simpson grievance*, Nov. 1, 1982. Majority: Saltman, Libeskind; dissent: Farrar — 12 pages. (2)

### Bargaining Unit

Assistant editor of the *Report on Business*: duties formerly performed by bargaining-unit personnel prior to reorganization — not excluded; grievance allowed. *Re Globe and Mail, Division of F.P. Publications (Eastern) Limited, & Southern Ontario Newspaper Guild*, Loc. 87; *Mackie grievance*, Nov. 26, 1982. Majority: Brent, Tate; dissent: Filion — 28 pages. (3)

"Clinical Instructor" excluded — words used in functional sense; grievance dismissed. *Re Scarborough Centenary Hospital Association & O.N.A.; policy grievance*, Nov. 11, 1982. Kennedy, McIntyre, Cancilla; addendum; McIntyre — 7 pages. (4)

Government sponsored trainee — performed some bargaining-unit work — predominantly a Personnel Department employee, valid exclusion; grievance dismissed. *Re Brantford, Corporation of City of, & C.U.P.E.*, Loc. 181; *union grievance*, Oct. 14, 1982. Swan, Maddison, Hallman; addendum: Hallman — 10 pages. (5)

Independent contractor status alleged — relationship identical to employer-employee relationship; grievances allowed in part. *Re Lindsay, Corporation of Town of, (Recreation Commission) & C.U.P.E.*, Loc. 855; *Quibell and union grievances*, Nov. 12, 1982. Betcherman — 11 pages. (6)†

Nurse clinicians — position not equivalent to excluded charge nurse position; grievance allowed. *Re Ottawa General Hospital & O.N.A.; union grievance*, Sept. 23, 1982. Majority: Teplitsky, Swenarchuk; dissent: Stansel; addendum: Swenarchuk — 8 pages. (7)

### Bereavement Pay

Entitlement — not conditional upon grievor's attendance at funeral; grievance allowed. *Re Westinghouse Canada Inc. & U.E.*, Loc. 504; *Brooks grievance*, Oct. 22, 1982. Majority: Weatherill, Bosnich; dissent: Kehoe — 12 pages. (8)\*

Entitlement to three days paid leave — not required to be three consecutive days; grievance allowed. *Re Rio Algom Ltd. & U.S.W.A.*, Loc. 5417; *Regis grievance*, Nov. 19, 1982. P. Picher — 8 pages. (9)

### Classification

Amendment of collective agreement by consent of parties — grievor promoted to lieutenant; grievance allowed in part. *Re Brockville, Corporation of City of, & International Association of Firefighters, Brockville Firefighters Association; Pullan grievance*, Oct. 18, 1982. Teplitsky, Lewis, Simpson — 3 pages. (10)

New classification system created — proper standards not applied to grievor; while no anti-union animus, time spent on union activities improperly considered; grievance allowed. *Re Canadian Broadcasting Corporation & N.A.B.E.T.; Walters grievance*, Nov. 3, 1982. M. Picher — 44 pages. (11)

New position — none of the elements of a higher classification present; grievance dismissed. *Re Bundy of Canada Limited & U.A.W.*, Loc. 1352; *policy grievance*, Nov. 22, 1982. Weatherill — 10 pages. (12)

Qualifications — grievor lacking sufficient skill, qualifications and experience to be a first-class mechanic; grievance dismissed. *Re Dome Mines Limited & U.S.W.A.; Thompson grievance*, Nov. 2, 1982. Majority: O'Shea, Furlong; dissent: Hoffman — 9 pages. (13)

### Collective Agreement

Retroactivity of responsibility pay — union's failure to prove any individual case; general order of damages not justified; grievance dismissed. *Re Oaklands Regional Centre & O.N.A.; union grievance*, Nov. 12, 1982. Majority: P. Picher, Sargeant; dissent: Beaulieu — 12 pages. (14)

### Contracting Out

Elimination of two positions — no evidence of causal link with work contracted out or work done by supervisory personnel; grievance dismissed. *Re Toronto General Hospital & C.U.P.E.*, Loc. 2001; *Fung grievance*, Nov. 16, 1982. Kruger, Sargeant, Beaulieu — 5 pages. (15)

### Damages

Award of "no loss of seniority or benefits" not referring to wages; eligibility for wages begins only from ordered reinstatement date. *Re National Steel Car Corporation Limited & U.S.W.A.*, Loc. 7135; *Briggs grievance* (supplementary award), Nov. 1, 1982. Bernstein — 5 pages. (16)†

Compensation for improper lay-off — no deduction for period grievor spent on vacation. *Re Twin Oaks Industrial Credit Union Ltd. & O.P.E.I.U.*, Loc. 290; *Flemington grievance* (supplementary award), Nov. 15, 1982. Adamson — 3 pages. (17)†

Calculation where unjust discharge — poor attendance record not a considerator; increased time spent running own business a consideration. *Re Canadian General Electric Company Ltd. & U.E., Loc. 524; Hannah grievance* (supplementary award), Oct. 29, 1982. Majority: Brunner, Russell; dissent: Byers — 9 pages. (18)

Compensation for improper classification — fact that grievor no longer an employee no bar — agreement prohibiting arbitrator from awarding damages does not encompass compensation. *Re Canadian Broadcasting Corporation & N.A.B.E.T.; Walters grievance*, Nov. 3, 1982. See (11), *supra*. (19)

#### Demotion

Decision to demote rather than transfer vice-principal — not discriminatory in school system; no breach; grievance dismissed. *Re CFB Kingston Board of Education & O.P.S.T.F.; Mosier grievance*, Nov. 22, 1982. Majority: Carter, Minuk; dissent: Posen — 9 pages. (20)

#### Discharge

Absenteeism — work-related medical problem; uncooperative attitude; no likely improvement; grievance dismissed. *Re Steel Company of Canada Limited, Hilton Works, & U.S.W.A., Loc. 1005; Lalli grievance*, Nov. 12, 1982. Majority: Brunner, Gray; dissent: Marshall — 8 pages. (21)

Absenteeism due to illness — prospects that illness would not return; conditional reinstatement; unpaid medical leave until fit to return to less stressful job. *Re West Bend of Canada & U.S.W.A., Loc. 6105; Porretta grievance*, Nov. 10, 1982. R.J. Roberts — 15 pages. (22)

Abuse of sick leave; grievor not providing proper explanation to employer — excessive discipline; reinstatement with compensation only for time lost subsequent to award. *Re White Farm Equipment Canada Ltd. & U.A.W., Loc. 458; Bruen grievance*, Nov. 4, 1982. H. Brown — 23 pages. (23)

Culminating incident; insubordination — grievor's evidence lacking credibility, poor past record; grievance dismissed. *Re Consumers Distributing Company Limited & Teamsters Local 419; Lewis grievances*, Oct. 7, 1982. Teplitsky, MacDermid, Stewart — 8 pages. (24)

Evidence of prior record — may include grieved discipline of culminating incident established first. *Re McDonnell Douglas Canada Ltd. & U.A.W., Loc. 1967; Doyle grievance*, Nov. 16, 1982. H. Brown — 9 pages. (25)

Failure to provide written reasons for discharge — requirement not mandatory — substantial compliance by company. *Re Brewers' Warehousing Company Limited & United Brewers' Warehousing Workers' Provincial Board; Samler grievance*, Nov. 10, 1982. Saltman — 7 pages. (26)

Failure to report to work after refusal of leave of absence — grievor required leave to serve jail sentence — refusal unreasonable; reinstatement with mitigation of damages. *Re Domtar Packaging & Canadian Paperworkers Union, Loc. 309; Bourden grievance*, Nov. 17, 1982. Majority: Swan, Weisbach; dissent: Byers — 9 pages. (27)

Fitness to return to work — not necessary that grievor able to do all jobs in classification; grievance allowed. *Re Carrier Air Conditioning (Canada) Ltd. & Sheet Metal Workers Association, Loc. 575; Brinovec grievance*. See (1), *supra*. (28)†

Illegal strike — great disparity in discipline; suspensions substituted. *Re Toronto General Hospital & C.U.P.E., Loc. 2001; Holmes and Persaud grievances*, Oct. 29, 1982. Saltman; partial dissent: Switzman; dissent: Sanderson — 34 pages. (29)

Insubordination — failure to explain unauthorized possession of company property — grievor senior with good record — suspension substituted. *Re Atlas Steels & Canadian Steelworkers' Union, Atlas Division; Ward grievance*, Nov. 2, 1982. Majority: McLaren, Simpson; dissent: Baldwin — 26 pages. (30)

Insubordination and poor work performance: culminating incident — progressive discipline applied; grievance dismissed. *Re North York General Hospital & C.U.P.E., Loc. 1692; Wu grievance*, Nov. 23, 1982. Little — 19 pages. (31)

Intoxication while at work, culminating incident — disciplinary record related to similar incidents; grievance dismissed. *Re Thunder Bay, Corporation of City of, & C.U.P.E., Loc. 87; Nordlander grievance*, Oct. 28, 1982. Devlin — 22 pages. (32)†

Mitigation — all sums earned by grievor from alternative employment during period of discharge to be included as mitigation of damages offsetting compensation owing; supplementary award. *Re Certified Brakes, a Lear Siegler Company, & U.S.W.A., Loc. 14832; Leonard grievance*, Nov. 3, 1982. O'Shea — 6 pages. (33)

Poor work performance and insubordination — discipline not appropriate where work performance affected by back injury; abusive language and insubordination; one-week suspension substituted. *Re Waxman and Co. & U.S.W.A., Loc. 6920; Froude grievance*, Nov. 9, 1982. Baum — 9 pages. (34)†

Procedure: notice of purpose of disciplinary interview — substantive right allowing grievor to have union representative present; grievor's discharge void. *Re Ottawa-Carleton, Regional Municipality of, & Ottawa-Carleton Public Employees Union, C.U.P.E. Loc. 503; Levesque grievance*, Oct. 12, 1982. Carrothers — 15 pages. (35)†

Theft of company property established on evidence; grievance dismissed. *Re Dominion Stores Limited & R.W.D.S.U., Loc. 414; Lemire grievance*, Oct. 14, 1982. Majority: D. Scott, Sergeant; dissent: McNevin — 16 pages. (36)

Unsafe work performance: non-disciplinary discharge — lengthy accident record; company had provided counselling and opportunities in each area of plant; no reasonable likelihood of improvement; grievance dismissed. *Re Rio Algom Ltd. & U.S.W.A., Loc. 5417; Ferland grievance*, Nov. 19, 1982. P. Picher — 35 pages. (37)

Vandalism during legal strike causing serious safety risk — delaying discipline until strike concluded reasonable; grievance dismissed. *Re Canwirco Inc. & U.S.W.A., Loc. 6187; Morrish grievance*, Oct. 29, 1982. Verity — 12 pages. (38)†

Work performance — poor work record — improvement unlikely; grievance dismissed. *Re Indalloy, Division of Indal Limited, & U.S.W.A., Loc. 2729; Pisano grievance*, Nov. 24, 1982. Samuels — 23 pages. (39)

**Discipline**

Absenteeism resulting in two days suspension — progressive discipline, no discrimination; reduced to one day by agreement. *Re International Tools Division of International Tools (1973) Limited & Windsor Mouldmakers Union, Loc. 1680; Kain grievance*, Nov. 10, 1982. Barton — 7 pages. (40)

Assault and abusive language at fellow employee in supervisory position — provocation found, suspension reduced from three days to one. *Re Dominion Stores Limited & R.W.D.S.U., Loc. 414; Megahy grievance*, Nov. 4, 1982. Brunner, Sergeant, Dahmer — 11 pages. (41)

Assault on supervisor — higher-level management imposed suspension after agreement made that grievor apologize and receive written warning; grievance allowed. *Re Denison Mines Limited & U.S.W.A.; Alford grievance*, Nov. 5, 1982. Adams — 11 pages. (42)

Failure to report for work; grievor telephoned after midnight to report to work immediately — discipline for refusal unreasonable; grievance allowed. *Re Zalev Brothers Ltd. & U.S.W.A., Loc. 3313; Chaborek grievance*, Nov. 17, 1982. Verity — 5 pages. (43)†

Failure to substantiate claim for reimbursement for clothing damaged at work — deception alleged, not established; grievance allowed. *Re Ottawa-Carleton Regional Transit Commission & A.T.U., Loc. 279; Sarault grievance*, Nov. 24, 1982. Kates, Harnden, Emond — 10 pages. (44)

Failure to work overtime shift — not regularly scheduled and grievor not notified; grievance allowed. *Re Brass Craft Canada Ltd. & I.A.M., Lodge No. 2446; Simpson grievance*, Nov. 1, 1982. See (2), *supra*. (45)

Failure to report to work upon recall — adequate, reasonable notice given; grievance dismissed. *Re Zalev Brothers Limited & U.S.W.A., Loc. 3313; Robinson grievance*, Nov. 17, 1982. Verity — 6 pages. (46)†

Falsification of time sheet alleged — not cheating; employee's file amended to read "improper completion" of time sheet. *Re S.A. Armstrong Ltd. & U.S.W.A., Loc. 6917; Thompson grievance*, Nov. 4, 1982. Black — 4 pages. (47)†

Insubordination and abusive language — "obey now, grieve later" rule — foreman's behaviour provocative, not related to production; five-day suspension reduced to two days. *Re Brewers Warehousing Company Ltd. & United Brewers Warehousing Workers' Provincial Board; Ripley grievance*, Nov. 5, 1982. Devlin — 21 pages. (48)†

Insubordination resulting in written warning and being sent home — failure to meet onus; grievance allowed. *Re Inco Metals Company & U.S.W.A., Loc. 6500; Cooke grievance*, Nov. 4, 1982. Majority: Gorsky, Keck; dissent: Pigott, addendum: Gorsky — 26 pages. (49)

Insubordination: various incidents involving insubordination — only two of the three established on evidence; grievances allowed in part. *Re DeHavilland Aircraft of Canada Limited & U.A.W., Loc. 112; Kulik grievances*, Nov. 24, 1982. Knopf — 23 pages. (50)†

Insubordination: verbal abuse of management — established on evidence; grievance dismissed. *Re Consumers Distributing Company Limited & Teamsters Local 419; Lewis grievances*. See (24), *supra*. (51)

Insubordination — insolent behaviour to supervisor — employer's conduct provocation in circumstances — three-day suspension reduced to one day. *Re Runnymede Hospital & S.E.U., Loc. 204; O'Mari grievance*, Oct. 29, 1982. Majority: Saltman, Wace; dissent: Beaulieu — 11 pages. (52)

Leaving work stations early — company policy reasonable, clear and known to all grievors; grievance dismissed. *Re Denison Mines Limited & U.S.W.A.; group grievance #2989*, Nov. 12, 1982. Adams — 4 pages. (53)

Obscene graffiti on company property — foreman's evidence preferred; prior disciplinary record; two-day suspension upheld. *Re Mobil Chemical Canada Ltd. & U.S.W.A., Loc. 14049; Haggan grievance*, Nov. 25, 1982. Kruger — 10 pages. (54)

Off-duty conduct — intoxication and causing property damage in room at inn where company employees stay on work assignment, no adverse effect on company's business interests; grievance allowed. *Re Bell Canada & Communications Workers of Canada; Auger grievance*, Nov. 4, 1982. Majority: Shime, Robbins; dissent: Filion — 6 pages. (55)

Poor work performance and leaving work station without permission alleged — not established; grievance allowed. *Re Consumers Distributing Company Limited & Teamsters Local 419; Lewis grievance*. (See (24,51) *supra*). (56)

Procedure: failure to meet immediate notice provisions when suspension imposed — no "time of the essence" provision; grievance dismissed. *Re Somerville Belkin Industries Limited & E.C.W.U., Loc. 30; Harvie grievance*, Oct. 26, 1982. Majority: Barton, Churchill-Smith; dissent: Flynn — 8 pages. (57)

Sleeping on job — grievor inadvertently dozed off after putting medication in eye, supervisor derelict in not awakening him; grievance allowed. *Re Canada Packers Inc. & U.F.C.W.U.; Boca grievance*, Nov. 9, 1982. O'Shea — 14 pages. (58)†

Sleeping on the job — unattended machine, safety risk; grievance dismissed. *Re Steel Company of Canada Limited & U.S.W.A., Loc. 1005; MacLean grievance*, Nov. 16, 1982. Majority: Burkett, Storie; dissent: Marshall — 9 pages. (59)

Unauthorized absence from work area — serious disciplinary record relating to similar misconduct; grievance dismissed. *Re Canada Post & C.U.P.W.; Mandel grievance*, Nov. 19, 1982. P. Picher — 8 pages. (60)

Work performance — problems beyond grievor's control, one month's production reports not enough evidence; grievance allowed. *Re Canada Metal Company Ltd. (Toronto Plant) & E.C.W.U., Loc. 2; McMahon grievance*, Nov. 15, 1982. Samuels — 38 pages. (61)†

Work performance — failure to tend machine, potentially dangerous damage to machine — no subsequent recognition of seriousness of situation; grievance dismissed. *Re Stelco Inc., Hilton Works, & U.S.W.A., Loc. 1005; Zanatta grievance*, Nov. 16, 1982. Majority: Brent, Storie; dissent: Marshall — 7 pages. (62)

Unauthorized absence resulting in one-day suspension — evidence of medical condition insufficient to justify absence, poor absenteeism record; grievance dismissed. *Re Stelco Inc., Hilton Works, & U.S.W.A., Loc. 1005; Tong grievance*, Nov. 4, 1982. Majority: Brent, Storie; dissent: Marshall — 6 pages. (63)

Unintentional failure to use safety vest resulting in suspension of several hours — grievor normally very conscientious — no need for corrective discipline; grievance allowed. *Re Toronto, Corporation of City of, & Metropolitan Toronto Civic Employees Union, Loc. 43; Burke grievance*, Oct. 29, 1982. Samuels — 6 pages. (64)

#### **Estoppel**

Acceptance of company practice — union estopped from relying on provision in collective agreement requiring payment of double time on certain Sunday shifts; grievance dismissed. *Re Steinberg Inc. (Miracle Food Mart Division) & Teamsters Loc. 419; group grievance*, Nov. 25, 1982.

Black — 16 pages. (65)†

Bargaining unit — union estopped from claiming that student jobs fall within bargaining unit — grievors not entitled to bump into student jobs rather than being laid-off. *Re Hypernetics Limited & I.A.M., Loc. 1542; Larocque and Duffy grievances*, Nov. 4, 1982. Swan — 11 pages. (66)\*

Collateral pre-employment contract promising benefits to employees on retirement not in writing nor incorporated in collective agreement — estoppel not applicable; grievance not arbitrable. *Re Toronto, Municipality of Metropolitan, & C.U.P.E., Loc. 43; group grievance*, Oct. 5, 1982.

Teplitsky, Moran, Taté — 10 pages. (67)\*

#### **Evidence**

Issue estoppel: determination that strike illegal fundamental to previous award — union precluded from relitigating issue. *Re Toronto General Hospital & C.U.P.E., Loc. 2001; Holmes and Persaud grievances*. See (29), *supra*. (68)

#### **Grievance Procedure**

Timeliness — discretion exercised to grant extension of time for filing grievance; grievance arbitrable. *Re Ferranti-Packard Limited & U.S.W.A., Loc. 5788; group grievance*, Nov. 5, 1982. Majority: Brunner, Mackenzie; dissent: Gilmore — 40 pages. (69)

Timeliness — no evidence of reasonable grounds for extension; prejudice to company; grievance not arbitrable. *Re Zalev Brothers Limited & U.S.W.A., Loc. 3318; Cossette grievance*, Nov. 17, 1982. Verity — 7 pages. (70)†

Timeliness — unreasonable delay in referral of discharge to arbitration following undertaking by union to do so in settlement of s.68 complaint — no grounds to grant extension; grievance dismissed. *Re Consumers Distributing Company Limited & Teamsters Local 419; Tonge grievance*, Oct. 28, 1982. Majority: Saltman, Kenny; dissent: Stewart — 26 pages. (71)

Timeliness — wording directory, not mandatory — fourteen-day delay not unreasonable, no claim of prejudice; grievance arbitrable. *Re Brass Craft Canada Ltd. & I.A.M., Lodge No. 2446; Simpson grievance*, Nov. 1, 1982. See (2,45), *supra*. (72)

Timeliness of grievance on non-payment of benefits, vacation pay and union dues — employer undertook to remedy it and is estopped from insisting on strict time limits; also a continuing grievance; also reasonable grounds for time extension (sec. 44(6)). *Re Wandlyn Motels Ltd. (Wandlyn Viscount Motor Hotel) & Hotel, Restaurant Employees Union, Loc. 743; union grievances*, Nov. 22, 1982 (preliminary rulings). Hinnegan — 9 pages. (73)†

Union grievance claiming non-payment of benefits and vacation pay — not precluded by fact that it could also be brought as group grievance. *Re Wandlyn Motels Ltd. (Wandlyn Viscount Motor Hotel) & Hotel, Restaurant Employees Union, Loc. 743; union grievances*. See (73), *supra*. (74)†

#### **Health and Safety**

Company unilaterally designating areas where eye protection must be worn — union-management safety committee not having exclusive jurisdiction; grievance dismissed. *Re De Havilland Aircraft of Canada Limited & U.A.W., Loc. 112; policy grievance*, Nov. 15, 1982. Gorsky — 11 pages. (75)

Refusal to wear safety visor — grievors sent home — ample notice of commencement date; grievance dismissed. *Re Consolidated Bathurst Packaging Ltd. & International Woodworkers of America, Loc. 2-242; Haines, Pinczuk, Gudgeon grievance*. Oct. 22, 1982. Egan — 6 pages. (76)†

Safety clothing — no reimbursement granted to grievor for safety shoes bought while grievor absent from work on compensation; grievance denied. *Re Allied Chemical Canada Ltd. & Loc. 89, U.A.W., Sullivan grievance*, Nov. 5, 1982. Samuels — 4 pages. (77)

#### **Holiday Pay**

Calculation where bumping — company not in breach by paying statutory holiday pay at rate of pay for job which grievors were actually performing on qualifying days; grievance dismissed. *Re Gabriel of Canada Limited & I.A.M., Loc. 1295; policy grievance*, Nov. 9, 1982. Majority: Kennedy, Pirrie; dissent: Lewis — 11 pages. (78)\*

Holiday falling on scheduled day off — no entitlement to paid holiday and day off with pay on other day; grievance dismissed. *Re Sunnybrook Hospital & O.N.A.; Harrison grievance*, Nov. 4, 1982. Swan, Symes, Lanigan — 10 pages. (79)

Qualifying days: shift overlapping beginning of holiday — date of shift is date on which it begins; grievor's absence two days preceding holiday does not disentitle; grievance allowed. *Re Nel-Gor Castle Nursing Home (London) & London and District Service Workers' Union, Loc. 220; Linker grievance*, Nov. 12, 1982. Majority: Gorsky, Beaulieu; dissent: McComb — 18 pages. (80)

#### **Illness**

Requirement of medical examination — no authority in company to require grievor to submit to medical examination by company doctor to substantiate truth of certificates provided by grievor's physicians; grievance allowed. *Re Keeprite Inc. & Keeprite Workers' Independent Union; Watson grievance*, Nov. 8, 1982. Majority: H. Brown, Hunter; dissent: Rogers — 36 pages. (81)\*

**Job Evaluation**

Higher classification sought — grievor not performing higher functions; grievance dismissed. *Re Toronto Library Board & C.U.P.E., Loc. 1996; Ogle grievance*, Nov. 4, 1982. Majority: O'Shea, McCormack; dissent: Richardson — 18 pages. (82)

Higher classification sought — grievor not performing higher functions — leadership responsibilities assumed, not assigned; grievance dismissed. *Re Toronto Public Library Board & C.U.P.E., Loc. 1996; Heighton grievance*, Nov. 5, 1982.

Majority: O'Shea, McCormack; dissent: Richardson — 21 pages. (83)

Higher classification sought — grievor voluntarily doing extra duties — cannot unilaterally upgrade position; grievance dismissed. *Re Toronto Public Library Board & C.U.P.E., Loc. 1996; Fimiani grievance*, Nov. 3, 1982. Majority: O'Shea, McCormack; dissent: Richardson — 19 pages. (84)

**Job Posting**

Notification of elimination of position — company failing to advise union that position eliminated because of lack of available work; grievance allowed. *Re Simmons Limited (Toronto Division) & U.E., Loc. 513; policy grievance*, Nov. 22, 1982. Devlin — 18 pages. (85)†

Previous award directed re-posting of position — no special conditions imposed — employer entitled to consider initially successful applicants' experience after first posting; grievances dismissed. *Re Sudbury General Hospital of the Immaculate Heart of Mary & C.U.P.E., Loc. 1023; Kusan and Kutchaw grievances*, Oct. 7, 1982. Teplitsky, Murray, McVey — 4 pages. (86)

**Job Vacancy**

Employees on lay-off — posting required for vacancy notwithstanding that some employees on lay-off with recall rights; interim award. *Re CHT Steel Limited & U.S.W.A.; policy grievance*, Nov. 3, 1982. Teplitsky — 6 pages. (87)

Temporary position — no vacancy to trigger seniority rights; grievance dismissed. *Re Toronto, Municipality of Metropolitan, & C.U.P.E., Loc. 43; Warlow grievance*, Nov. 10, 1982. Majority: Swan, Beresford; dissent in part: Tate — 10 pages. (88)

**Lay-off**

Bumping rights — grievor not able to learn job in ten days; grievance dismissed. *Re Westinghouse Canada Ltd. & U.E., Loc. 504; DeCola grievance*, Nov. 4, 1982. Swan — 9 pages. (89)†

Bumping rights — insufficient experience, no obligation to train grievor; grievance denied. *Re Westinghouse Canada Inc. & U.E., Loc. 504; Miller grievance*, Nov. 15, 1982. Davis — 13 pages. (90)†

Bumping rights; trial period — company failed to provide grievor a reasonable trial period; grievance allowed. *Re Eddy Match Company Limited & United Brotherhood of Carpenters and Joiners, Loc. 3175; Wierzbicki grievance*, Oct. 27, 1982. Saltman — 8 pages. (91)

Bumping rights where short term lay-off — senior employees must be given option to bump into designated jobs; qualifications not necessary, but overall safety a factor; grievances allowed. *Re Firestone Canada Inc. (Hamilton Plant) & United Rubber Workers, Loc. 113; group grievances*, Nov. 9, 1982. Black — 10 pages. (92)†

Disclosure of data — employer breached collective agreement by failing to disclose data supporting decision to lay-off when union notified of decision; grievance allowed. *Re Georgian College of Applied Arts and Technology & O.P.S.E.U.; Mack grievance*, Nov. 9, 1982. Brent, Shields, McManus — 7 pages. (93)

Holiday pay and welfare benefits — no entitlement to holiday pay but company obligated to maintain certain welfare benefits for employees on temporary lay-off; grievance allowed in part. *Re Sunbeam Corporation (Canada) Limited & U.E., Loc. 566; policy grievance*, Nov. 26, 1982. Devlin — 31 pages. (94)†

Qualifications — grievor lacking skill to perform job — three-day trial period not applicable to skilled job; grievance dismissed. *Re Black Clawson-Kennedy Limited & U.S.W.A., Loc. 2469; Harity grievance*, Nov. 9, 1982. Majority: O'Shea, Baldwin; dissent: Nobes — 12 pages. (95)

Qualifications — grievor qualified to do available work with reasonable training; grievance allowed. *Re Charles Wilson Limited & Brewery Workers, Loc. 384; Denike grievance*, Nov. 23, 1982. Brent — 6 pages. (96)†

Various stated cases regarding seniority, temporary assignments, lay-offs and vacancies. *Re Gabriel of Canada Limited & I.A.M., Loc. 1295; policy grievances*, Nov. 24, 1982. Majority: Weatherill, Moran; dissent in part: Lewis — 20 pages. (97)

**Leave of Absence**

Adjustment to service review date occasioned by nurse's absence without pay exceeding thirty days — "such absence" denoting entire amount of leave; grievance dismissed. *Re St. Joseph's Hospital, Hamilton, & O.N.A.; policy grievance*, Nov. 17, 1982. Majority: Swan, Mustard; dissent: Mayne — 14 pages. (98)

**Management Rights**

Personal appearance rule — rule prohibiting beards reasonable; based on proper business considerations; consumer opinion survey used; grievance dismissed. *Re Canada Safeway Ltd. & Retail Clerks Union, Loc. 206; Cerenzie grievance*, Nov. 2, 1982. Majority: H. Brown, Murray; dissent: Rudrum — 29 pages. (99)\*

**Overtime**

Distribution — company alleging at arbitration that grievor not capable of performing work; not alleged as reason in grievance procedure; grievance allowed. *Re Allied Chemical & U.A.W., Loc. 89; Maitre grievance*, Nov. 16, 1982. Kruger — 6 pages. (100)

Entitlement — employee not entitled to overtime in addition to holiday pay unless employee works or is scheduled to work on holiday; grievance dismissed. *Re Eastern Steelcasting & U.S.W.A., Loc. 8794; group grievance*, Nov. 15, 1982. Bernstein — 9 pages. (101)†

Existence of overtime: work reassigned to other tradesmen — employer not obliged to call in appropriate tradesman on overtime; grievance dismissed. *Re Rio Algoma Ltd. & U.S.W.A., Loc. 5417; Bennett grievance*, Nov. 19, 1982. P. Picher — 11 pages. (102)

**Premium Pay**

Call-back: employees called in but contiguous to regular shift — no extra trip required; grievances dismissed. *Re Kent, County of, & O.P.S.E.U.; Bruette and others grievances*, Nov. 16, 1982. Majority: Swinton, Sigurjonsson; dissent: Beaulieu — 7 pages. (103)\*

**Probationary Employees**

Failure to give proper credit for full-time service — grievor dismissed after probationary period; grievance allowed. *Re St. Lawrence College & O.P.S.E.U.; Arsenault grievance*, Nov. 16, 1982. Majority: Brent, Shuttleworth; dissent: Robbins; addendum: Robbins — 31 pages. (104)

**Promotion**

Failure to give proper training alleged — no requirement of more than minimal instruction and discussion of problems; grievance dismissed. *Re Simmons Limited & U.E., Loc. 513; Bartlett grievance*, Oct. 26, 1982. Devlin — 16 pages. (105)†

Fairness of testing procedures — purpose of exam to establish short list; exam too difficult; job to be reposted. *Re Toronto, Municipality of Metropolitan, & Metropolitan Toronto Civic Employees Union, Loc. 43; Borstadt et al grievances*, Nov. 2, 1982. Majority: Carter, Tate; dissent to follow: Moran — 16 pages. (106)\*

Grievor objecting to duties and hours on job description — employer reasonable in refusing to accept grievor for position; grievance dismissed. *Re University of Toronto & Canadian Union of Educational Workers; Shenton grievance*, Oct. 5, 1982. Majority: Teplitsky, Cook; dissent: Sanders — 16 pages. (107)

Procedure: management promotion committee — onus to gather facts and properly assess; grievance allowed in part. *Re Western Controls Inc. & I.B.E.W., Loc. 1590; Berretty grievance*, Nov. 10, 1982. McLaren, Coxford, Wacheski — 13 pages. (108)

Progression: denial of advancement to registered nurse — advancement provision not satisfied by promotion from graduate nurse status; grievance allowed. *Re Baycrest Hospital & O.N.A.; Feehan grievance*, Nov. 17, 1982. Majority: Swan, Mayne; dissent: Boettcher — 12 pages. (109)

Qualifications — employer's decision not arbitrary, unreasonable or in bad faith; grievance dismissed. *Re Halton Board of Education & Halton Board of Education Office Personnel Association; Hawcutt grievance*, Nov. 4, 1982. Black — 10 pages. (110)†

Qualifications — failure to show initiative and motivation in interview; grievance dismissed. *Re Toronto, Corporation of City of, & C.U.P.E., Loc. 79; Grasett grievance*, Nov. 2, 1982. Kates — 20 pages. (111)

Qualifications — grievor qualified despite prior record of absenteeism; grievance allowed. *Re Ottawa Civic Hospital & C.U.P.E., Loc. 576; Domenico grievance*, Nov. 21, 1982. Kates — 15 pages. (112)†

Qualifications — incumbent's greater experience in same classification important given complexity of job, grievor's previous request for transfers relevant; grievance dismissed. *Re Electrohome Ltd. & I.B.E.W.; Pawlak grievance*, Nov. 15, 1982. Knopf — 22 pages. (113)†

Qualifications — junior employee better trained for position; grievance dismissed. *Re Hayes-Dana Inc. & U.A.W., Loc. 374; Macoretta grievance*, Nov. 8, 1982. Weatherill — 6 pages. (114)

Qualifications — written test imposed by employer reasonable in competition for training position; senior grievor did not pass test; grievance dismissed. *Re Noranda Mines Ltd. (Geco Division) & Canadian Union of Base Metal Workers; Boulet grievance*, Nov. 2, 1982. H. Brown — 20 pages. (115)

Sole applicant — grievor unqualified; grievance dismissed. *Re Ladish Co. of Canada Ltd. & U.A.W., Loc. 397; Witt grievance*, Nov. 22, 1982. Verity — 8 pages. (116)

Transfer of another employee not a promotion — procedural requirements not applicable; grievance dismissed. *Re Dominion Stores Limited & U.F.C.W.U., Loc. 206; Quesnelle grievance*, Nov. 24, 1982. Majority: Brent, White; dissent: Thomson — 8 pages. (117)

Unfairness — union arguing that pattern of temporary transfers gave incumbent unfair advantage in competition; matter should have been raised earlier; grievance dismissed. *Re Erco Industries Limited & U.S.W.A., Loc. 6304; Gaylord grievance*, Nov. 1, 1982. Gorsky, Rovet, Sharp — 10 pages. (118)

**Retirement**

Refusal to pay vacation bonus: retirement coincident with date of vacation entitlements — employment ceased after entitlements triggered; grievance allowed. *Re Molson's Brewery (Ontario) Limited & Brewery Workers, Loc. 304; Bruns grievance*, Nov. 9, 1982. Brandt — 6 pages. (119)

Unilateral retirement policy imposed — provision preserving existing privileges; opportunity to work past sixty-five years of age preserved; grievances allowed. *Re St. Joseph of Villa Maria, Religious Hospitallers of, & S.E.I.U., Loc. 210; policy grievance and Dauphinais and others grievances*, Nov. 5, 1982. Majority: Saltman, Lewis; dissent: Burnell — 15 pages. (120)\*

**Scheduling or Work**

Scheduling of days off in lieu of paying premium pay — company not entitled to schedule December 23 and 27 as days off in lieu of Christmas and Boxing Day; grievance allowed. *Re Canadian Broadcasting Corporation & Council of C.U.P.E. Broadcast Units; policy grievance*, Nov. 16, 1982. Arthurs — 13 pages. (121)

**Seniority**

Calculation — grievor less senior when seniority as journeyman calculated from date of entry to maintenance department; grievance dismissed. *Re Elan Tool and Die Limited & U.A.W., Loc. 127; Wright grievance*, Nov. 1, 1982. H. Brown — 12 pages. (122)

Calculation — branch-wide rather than company-wide seniority governing; grievors transferred to Oshawa branch on closure of Windsor branch not entitled to dovetail into Oshawa seniority list; grievances dismissed. *Re Roadway Transport Limited & Teamsters; group grievance, Smith and Bartram grievances*, May 6, 1982. Dissanayake — 4 pages. (123)

Calculation — seniority effective from original date of employment — no error in compensation; grievance allowed in part. *Re Childrens' Aid Society of County of Brant & C.U.P.E.; Dalton grievance*, Nov. 9, 1982. Black; dissents: Hallman, Maddison — 21 pages. (124)

Dovetailing of seniority on sale of part of a business; size of that part reduced on sale — dovetailing on active seniority list only to extent of jobs actually passed. *Re Champlain Sept-Iles Express Interprovincial Inc. & Teamsters, Loc. 938; union policy grievance*, Oct. 29, 1982. Majority: Carter, Tait; dissent: Dinsdale — 10 pages. (125)\*

Foreman transferred back to bargaining unit: retained and accumulated seniority from original employment date — no clear language in collective agreement to deprive him of seniority on transfer out of bargaining unit; grievance dismissed. *Re Standard Products (Canada) Ltd. & Canadian Rubber Workers Union No. 154; union policy grievance*, Nov. 18, 1982. R.J. Roberts — 10 pages. (126)†

#### Strike

Struck-work clause — company not in breach by continuing to feed a news programme to affiliated employer station involved in lawful strike; grievance dismissed. *Re Canadian Broadcasting Corporation & N.A.B.E.T.; policy grievance*, Nov. 5, 1982. P. Picher — 19 pages. (127)

#### Transfer

Transfer to different job location — not type of transfer governed by seniority; grievance dismissed. *Re Brantford City Board of Park Management and Recreation Commission & Brantford Civic Employees Union, C.U.P.E. Loc. 181; Makarchuk grievance*, Nov. 12, 1982. Barton — 10 pages. (128)†

#### Union Rights

Super seniority during lay-off — restricted to one grievance committee per department; grievance dismissed. *Re Adams Mine & U.S.W.A., Loc. 6409; Brazeau grievance*, Nov. 10, 1982. Duchesneau-McLachlan — 7 pages. (129)†

#### Vacation

Scheduling: company scheduling vacation during plant shutdown — no option in grievors to take a lay-off from work rather than scheduled vacation; grievances dismissed. *Re Lake Ontario Steel Company Ltd. & U.S.W.A., Loc. 6571; Svajlenko, Peters grievances*, Nov. 2, 1982. H. Brown — 10 pages. (130)

#### Vacation Pay

Calculation: grievor short of quota by reason of jury duty — company consistent with past practice; grievance dismissed. *Re Stelco Inc. (Hilton Works) & U.S.W.A., Loc. 1005; Lloyd grievance*, Nov. 3, 1982. Houston — 14 pages. (131)†

#### Wages

Calculation — company entitled to correct error of paying grievor 90% of average hourly earnings for light work duties performed on last shift on Friday; grievance dismissed. *Re Goodyear Canada Inc. & United Rubber Workers, Loc. 232; Willett grievance*, Nov. 15, 1982. Kennedy — 10 pages. (132)

Calculation — fundamental error made by company in calculation of allowable rate increases under federal anti-inflation legislation; grievance allowed. *Re Ferranti-Packard Limited & U.S.W.A., Loc. 5788; group grievance*. See (69), *supra*. (133)

Company in receivership — wages, vacation pay, pension contributions owing; grievance allowed. *Re G & G Packaging Limited & Teamsters, Loc. 1351; group grievance*, Nov. 15, 1982. Devlin — 11 pages. (134)

Denial of annual increment — financial difficulties for company not relevant to grievor's performance; grievance allowed. *Re British Airways & I.A.M., Loc. 2413; Mason grievance*, Nov. 24, 1982. Samuels — 6 pages. (135)\*

Incentive pay — company erred in selecting rate at which grievors entitled to be compensated; grievances allowed. *Re Firestone Canada Inc. (Hamilton Plant) & United Rubber Workers, Loc. 113; Sellars and Semenchuk grievances*, Nov. 22, 1982. Verity — 10 pages. (136)†

Incentive plan — provision against change in work content does not prevent new standard — improper factors in management decision; grievance allowed in part. *Re Rockwell International of Canada Ltd. & U.A.W., Loc. 127; McCutchen grievance*, Nov. 16, 1982. Black — 10 pages. (137)

#### The Hospital Labour Disputes Arbitration Act

The following interest arbitration awards under *The Hospital Labour Disputes Arbitration Act* were filed with the Office of Arbitration during the month of November, 1982.

*Ark Eden Nursing Home & Christian Labour Association of Canada*. Betcherman; dissents: Graham, De Jong — 15 pages.

*Bestview Holdings (Sarnia) Limited & O.N.A.* Swan, Perkins, Paliare — 4 pages.

*Brookhaven Nursing Home & S.E.U., Loc. 210* (supplementary award). Majority : M. Picher, Lewis; disassociation: Valin — 10 pages.

*Edward Street Manor Nursing Home & O.N.A.* Majority: Betcherman, Switzman; dissent: Bass; addendum: Switzman — 24 pages.

*Metropolitan General Hospital, Windsor, & I.B.E.W., Loc. 636*. H. Brown, Bartlet, Senay — 18 pages.

*John Noble Home for Aged & O.N.A.* Waisglass; partial dissent: L. Lewis; partial dissent to follow: Mayne — 9 pages.

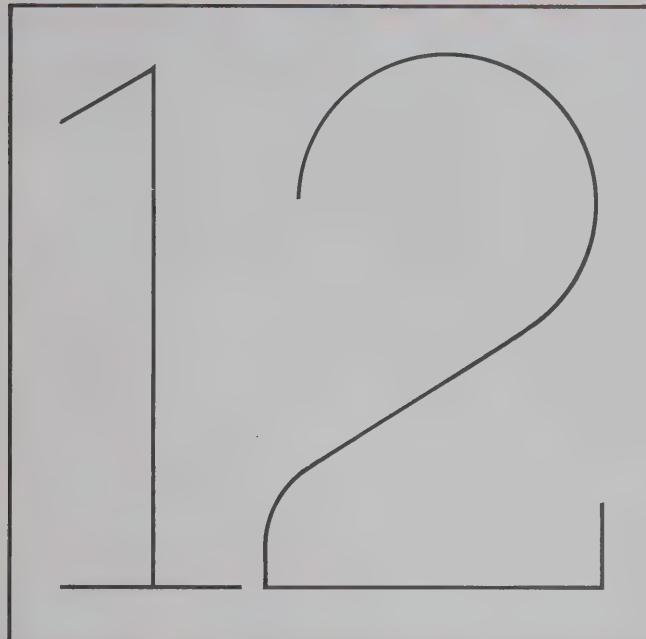
*Pinewood Court (Thunder Bay District Home for Aged) & O.N.A.* Majority: Betcherman, McIntyre; dissent: Holt; addendum: McIntyre — 13 pages.

*River Glen Haven Nursing Home & C.U.P.E. (full-time)*. Black; dissent to follow: Wakely; partial dissent: Robbins — 60 pages.

*Thunder Bay Homes for Aged & O.N.A.* Majority: Betcherman, McIntyre; dissent: Holt; addendum: McIntyre — 8 pages.

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# Monthly Bulletin



Ontario Ministry of Labour



Hon. Russell H. Ramsay, Minister  
T.E. Armstrong, QC, Deputy Minister

Office of Arbitration  
400 University Avenue, 6th Floor  
Toronto, Ontario  
M7A 1T7  
Tel. (416) 965-5669

Miss Jean M. Read, Director

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persons involved in labour-management  
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## Purchase of Awards

All awards listed in the *Monthly Bulletin* may be reviewed at the Office of Arbitration, 400 University Avenue, 6th Floor, Toronto, Ontario, M7A 1T7. Copies may be purchased for a fee of 50¢ per page and orders will be filled upon receipt of a request and a cheque or money order payable to the Treasurer of Ontario, for the applicable amount.

## Appointment of Arbitrators

Forms for requests for appointment of arbitrator under section 45 of *The Labour Relations Act* are available on request, from the Office of Arbitration.

## Grievance Arbitration

The following awards were filed with the Office of Arbitration during the months of November and December, 1982. The summary was prepared under the supervision of C.G. Simmons, B.A., B.C.L., LL.M.; D.D. Carter, B.A., B.C.L., LL.B. and K.P. Swan, P. Eng., LL.B.

\* Indicates award to be reported in full or in part in *Labour Arbitration Cases*.

† Indicates award issued under section 45 of *The Labour Relations Act*.

## Arbitrability

Foreman's conduct — no jurisdiction to order management to impose discipline upon a foreman; grievance not arbitrable. *Re Brantford, Corporation of City of, & Brantford Civic Employees' Union, Loc. 181; Morrison grievance*, Nov. 17, 1982. Ord, Brillinger, Maddison — 11 pages. (1)

Inequitable work load — board may decide questions of relative or absolute inequitability, whether or not raised at committee hearing; employer's preliminary objection dismissed. *Re Fanshawe College & O.P.S.E.U.; Ward grievance*, Nov. 22, 1982. Majority: O'Shea, McManus; dissent: Hallsworth — 33 pages. (2)

Just cause provision absent; no provision limiting employer's right of discharge — grievance not arbitrable. *Re Ottawa Board of Commissioners of Police & Ottawa Police Association; Decker grievance*, Dec. 14, 1982. Brent — 18 pages. (3)

Promotions to management positions — beyond ambit of collective agreement; grievances not arbitrable. *Re Toronto, Municipality of Metropolitan, (Metropolitan Toronto Licensing Commission) & C.U.P.E.; Weibicke and Davidson grievances*, Nov. 12, 1982. Majority: Linden, Perron; dissent: Tate — 18 pages. (4)

Request for an appointment of arbitrator under s. 45(2) of *The Labour Relations Act* — request untimely; grievances not arbitrable. *Re Kelson Spring Products Limited & U.S.W.A.*, Loc. 7291; *Matos, Pignataro and Honkawa grievances*, Nov. 30, 1982. Little — 16 pages. (5)†

Retirement of grievor — provision that action must be reasonable; grievance arbitrable. *Re Boots Drug Stores (Canada) Limited & Commercial and Industrial Union*, Loc. 206; *Langdon grievance*, Dec. 2, 1982. Knopf — 16 pages. (6)†

Personal contract employee excluded from just cause provisions of collective agreement — grievance not arbitrable. *Re Royal Ontario Museum & O.P.S.E.U.; McLaren grievance*, Dec. 2, 1982. MacDowell, Davies, Millard — 9 pages. (7)

Settlement — grievor signed release, accepted and cashed cheques as compensation; no evidence of duress; improper to reopen correctness of compensation calculation; grievance dismissed. *Re National Steel Car Ltd. & U.S.W.A.*, Loc. 7135; *Ferrelli grievance*, Dec. 14, 1982. Verity — 10 pages. (8)†

#### Bargaining Unit

Principal planner — excluded position; grievance dismissed. *Re Thunder Bay, Corporation of City of, & C.U.P.E.*, Loc. 87; *policy grievance*, Nov. 29, 1982. Betcherman — 7 pages. (9)†

#### Bereavement Leave

Entitlement — company estopped from denying entitlement of grievor — detrimental reliance; grievance allowed. *Re Oakville Hydro Electric Commission & I.B.E.W.*, Loc. 1766; *Draker grievance*, Dec. 6, 1982. Devlin — 13 pages. (10)†

#### Board of Arbitration

Specific penalty clause: maximum penalty not mandatory — no derogation of arbitrator's general authority to modify penalty. *Re International Carriers Limited & Teamsters Loc. 880; Williams grievance*, Dec. 2, 1982. Majority: MacDowell, Burnell; dissent: Laub; addendum: Burnell — 35 pages. (11)

#### Classification

Definition of classification — as in wage schedule; employer not free to make own definition; grievance allowed. *Re Westgate Lodge Nursing Home & S.E.U.*, Loc. 183; *Ritz et al grievance*, Dec. 21, 1982. Kates, Budd, Lewis; addendum: Budd — 13 pages. (12)

Higher classification claimed — evidence established that grievors not performing work of higher-rated classification; grievance dismissed. *Re Federal Pioneer Limited & U.E.*, Loc. 564; *policy grievance*, Dec. 9, 1982. Majority: H. Brown, Salmon; dissent: Aslin — 13 pages. (13)

Higher classification claimed — journeyman's claim for classification as a technologist — does not perform core functions of higher classification; grievance dismissed. *Re Seneca College & O.P.S.E.U.; Ryan grievance*, Dec. 20, 1982. Majority: Swinton, Gray; dissent: Richardson — 11 pages. (14)

Permanent vacation relief operator — company erred in failing to classify job of vacation relief operator at process operator level; grievance allowed. *Re Dow Chemical of Canada Limited & Oil, Chemical and Atomic Workers Union*, Loc. P-672; *policy grievance*, Dec. 2, 1982. R.J. Roberts — 8 pages. (15)†

#### Collective Agreement

Appendix on welfare benefits: part of collective agreement — included above signatures in previous agreements, included in index — clearly intended to be part of agreement; employer preliminary objection denied. *Re Consolidated Bathurst Packaging Ltd. & International Woodworkers of America*, Loc. 2-69; *union policy grievance*, Dec. 16, 1982. Rose — 17 pages. (16)†

#### Damages

Calculation — correct measure offered by company — differences between what grievors actually earned and what they would have earned in relevant period, had offending change in scheduling not occurred; supplementary award. *Re Canada Starch Company Inc. & United Food Processors Union*, Loc. 483; *union grievance*, Dec. 9, 1982. Hinnegan — 10 pages. (17)

Compensation — option of part-time employment or termination ought to have been offered to grievors who were probationary full-time employees — compensation payable from time of breach subject to mitigation; supplementary award. *Re Air Canada & Canadian Air Line Employees' Association; Burnell, Mattu and Straub grievances*, Dec. 9, 1982. P. Picher — 27 pages. (18)

Interest; common-law measure not including interest — no statutory authority to award — no provision in collective agreement authorizing award of interest; supplementary award. *Re Keeprite Inc. & Keeprite Workers' Independent Union; Clarke grievance*, Dec. 13, 1982. Majority: McLaren, Rogers; dissent: Minsky — 26 pages. (19)\*

Union grievance — board not restricted to declaratory relief; monetary award appropriate; grievance allowed. *Re Viscount Hotel — Successor to Wandlyn Viscount Motor Hotel (484566 Ontario Ltd.) & Hotel, Restaurant Employees Union*, Loc. 743; *union grievance*, Dec. 8, 1982. Hinnegan — 11 pages. (20)†

#### Discharge

Absence from work unexplained — valid medical reasons; grievor's difficulty with English and friend's misleading advice caused grievor not to notify company; reinstatement without compensation. *Re Canada Alloy Castings Ltd. & U.S.W.A.*, Loc. 5699; *Machado grievance*, Dec. 2, 1982. O'Shea — 11 pages. (21)

Absence without leave — request for leave while in jail refused; employer's actions not reviewable; grievance dismissed. *Re Inco Limited & U.S.W.A.*, Loc. 6500; *Hunter grievance*, Dec. 10, 1982. Majority: Gorsky, Keenan; dissent: Sheppard — 22 pages. (22)

Absence without notice — grievor failed to comply with duty of notification; past warning; grievance dismissed. *Re Steel Company of Canada & U.S.W.A.*, Loc. 1005; *Smeaton grievance*, Nov. 27, 1982. Rayner — 10 pages. (23)†

Absence without notice — provision for loss of all seniority; grievance dismissed. *Re Victory Soya Mills Limited & Teamsters Loc. 1247; Miller grievance*, Dec. 21, 1982. Majority: O'Shea, Joyce; dissent: Wilson — 11 pages. (24)

Absenteeism — continuing psychological and emotional problems; grievance dismissed. *Re St. Joseph's Hospital (Sisters of St. Joseph of Diocese of London) & London and District Service Workers Union*, Loc. 220; *Kennedy grievance*, Dec. 2, 1982. Hinnegan — 10 pages. (25)†

Absenteeism: failure to provide medical certification of continuing disability — no warning; suspension substituted. *Re Graham Fibreglas Ltd. & A.B.G. Workers, Loc. 271; Thompson grievance*, Dec. 16, 1982. Teplitsky — 3 pages. (26)

Absenteeism — pattern of unexplained sporadic short-term absences — insufficient evidence to establish likelihood of future irregular attendance; conditional reinstatement without compensation. *Re London, Corporation of City of, & London Fire Fighters' Association, Loc. 142; Simms grievance*, Dec. 22, 1982. Kennedy — 22 pages. (27)

Absenteeism — no evidence of discrimination, grievor's failure to discharge onus to show improvement likely; grievance dismissed. *Re Oshawa General Hospital & C.U.P.E., Loc. 45; Guarini grievance*, Dec. 7, 1982. Kruger, Cancilla, Lewis; addendum: Lewis — 11 pages. (28)

Assault on supervisor and false accusation of indecent assault alleged — not established on balance of probabilities; grievance allowed. *Re Canada Post Corporation & C.U.P.W.; Lamb grievance*, Dec. 3, 1982. Burkett — 43 pages. (29)\*

Assault on superior — preceded by serious provocations by victim; minor and unpremeditated blow; reinstatement with half compensation. *Re Sureway Transport Limited & Canadian Union of Heavy Haulers and Maintenance Workers; Lancaster grievance*, Dec. 30, 1982. Majority: P. Picher, Sturges; dissent: Murray — 37 pages. (30)

Culminating incident; abusive language — discharge appropriate in light of disciplinary record and attitude; grievance dismissed. *Re Abitibi-Price Inc. (Fort William Division) & Canadian Paperworkers Union, Loc. 132; Schoffer grievance*, Dec. 7, 1982. Majority: Swinton, Keenan; dissent: Stencer — 16 pages. (31)

Culminating incident: carelessness causing damage to property, danger to co-worker — good past record — suspension substituted; *Re Cara Operations Limited & Hotel, Restaurant and Cafeteria Employees Union, Loc. 75; Lal grievance*, Dec. 22, 1982. Majority: Kruger, Tate; dissent: Sanderson — 7 pages. (32)

Culminating incident: minor careless accident — lengthy related record — failure to respond to discipline — grievor's candour not enough to mitigate; grievance dismissed. *Re Domglas Inc. (Brampton) & United Glass and Ceramic Workers, Loc. 260; Cummins grievance*, Dec. 15, 1982. Devlin — 17 pages. (33)†

Culminating incident: violation of reporting policy — grievor obviously contrite; reinstatement without compensation. *Re Goodyear Canada Inc. & United Rubber Workers, Loc. 189; Johnson grievance*, Nov. 26, 1982. Adams — 12 pages. (34)

Denial of tenure and renewal of contract — failure to make progress with independent research — no procedural unfairness; grievance dismissed. *Re Queen's University & Professor Arthur E. Zimmerman*; Dec. 10, 1982. M. Picher — 28 pages. (35)

Disability — grievor unable to perform work; evidence establishing disability; grievance dismissed. *Re Maple Lodge Farms Limited & U.F.C.W.U., Loc. 1105P; Tavares grievance*, Dec. 7, 1982. Kennedy — 16 pages. (36)

Dishonesty alleged — grievor punching in at higher-rated classification but actually working in lower-rated classification — reckless disregard — suspension substituted. *Re Benson & Hedges & Bakery, Confectionery and Tobacco Workers International Union, Loc. 325-T; Cerijanec grievance*, Dec. 31, 1982. P. Picher — 13 pages. (37)

Disruptive conduct with other employees — wilful damage of company property; grievance dismissed. *Re Holiday Inn of Don Valley (Commonwealth Holiday Inns) & Hotel and Club Employees' Union, Loc. 75; Singh grievance*, Dec. 20, 1982. O'Shea, Parker, Tate — 17 pages. (38)

Inattention causing serious bus accident — no discipline for previous accidents, family problems caused psychological difficulties; conditional reinstatement. *Re Ottawa-Carleton Regional Transit Commission & A.T.U., Loc. 279; Purvis grievance*, Dec. 9, 1982. Majority: Hinnegan, Harnden; dissent: Emond — 10 pages. (39)

Instigation of slowdown and illegal strike plus interference with grievance procedure — only attempted slowdown proven; suspension from discharge date until reinstatement. *Re Titan Proform Company Limited & U.A.W., Loc. 124; Johnson grievance*, Dec. 6, 1982. H. Brown — 18 pages. (40)

Insubordination; personal appearance rule violated — reasonable safety requirement; grievance dismissed. *Re Du Pont Canada Inc., Ajax, & Teamsters, Loc. 1166; Pedrick grievance*, Dec. 24, 1982. Burkett, Binning, Hollins — 20 pages. (41)\*

Loss of seniority — grievor loses seniority but does not become a probationary employee; reinstatement without compensation. *Re J.C. Hallman Manufacturing Company Ltd. & U.S.W.A., Loc. 5974; Dickson grievance*, Dec. 7, 1982. Brent — 11 pages. (42)\*

Physical disability — collective agreement deems employee to be terminated after two years absence — likelihood of improvement irrelevant; grievances dismissed. *Re VS Services Ltd. & Milk and Bread Drivers, Dairy Employees, Caterers and Allied Workers, Loc. 647; L'Ecuyer and Sinkevitch grievances*, Dec. 17, 1982. MacDowell — 8 pages. (43)

Picketing: personal protest triggering illegal work stoppage — action deliberate and protracted — grievor aware of potential consequences; grievance dismissed. *Re International Carriers Limited & Teamsters Loc. 880; Williams grievance*. See (11), *supra*. (44)

Probationary employee — work-related factors considered — grievor unsuitable; grievance dismissed. *Re Bell Canada & Communications Workers of Canada; McMaster grievance*, Dec. 17, 1982. Majority: P. Picher, Churchill-Smith; dissent: Beaulieu — 16 pages. (45)

Section 61.5 of *Canada Labour Code*: jurisdiction — agreement not constituting collective agreement; jurisdiction to deal with merits. *Re Monson Trucking Inc. & Clifford Karila*; Dec. 20, 1982. Aggarwal — 23 pages. (46)

Sexist remarks — no progressive discipline — excellent worker; reinstatement without compensation. *Re St. Vincent Hospital, Ottawa, & I.U.O.E., Loc. 796; Belanger grievance*, Nov. 26, 1982. Little, Stansel, Ball — 22 pages. (47)

Theft — grievor installed company meter at his cottage enabling him to steal hydro service from another utility; grievance dismissed. *Re Windsor Utilities Commission & I.B.E.W.*, Loc. 636; *Laporte grievance*, Dec. 6, 1982. Hinnegan — 27 pages. (48)†

Theft alleged — misappropriation of funds from sale of flight tickets established; grievance dismissed. *Re Air Canada & Canadian Air Line Employees Association; Blandford grievance*, Dec. 18, 1982. Simmons — 16 pages. (49)

Theft and violation of employee purchase policy alleged — intent to steal not established; suspension substituted. *Re Dominion Stores Limited & R.W.D.S.U.*, Loc. 414; *Simard grievance*, Nov. 30, 1982. Bernstein — 16 pages. (50)†

Total disability — no reasonable likelihood of return to work in foreseeable future — proviso that employee not to lose seniority because of absence due to sickness — does not preclude employer from discharging grievor; grievance dismissed. *Re Russelsteel, Division of York Russel Inc., & U.S.W.A.*, Loc. 5958; *Sardone grievance*, Dec. 13, 1982. Davis — 11 pages. (51)\*†

Unauthorized use of employer's vehicle to meet personal emergency; threatening security guard — mitigating factors — suspension substituted; grievance allowed. *Re West Park Hospital & S.E.I.U.*, Loc. 204; *McDooling grievance*, Dec. 6, 1982. Baum — 11 pages. (52)†

Union official's purported suspension of grievor — subsequent employer action necessary to sever employment relationship. *Re International Carriers Limited & Teamsters Loc. 880; Williams grievance*. See (11, 44), *supra*. (53)

Work performance — grievor incompetent but entitled to be treated as continuing employee and to be considered for other available posted jobs; grievance allowed in part. *Re Canadian National Institute for the Blind & S.E.U.*, Loc. 204; *Golding grievance*, Dec. 15, 1982. Majority: Dunn, Wilson; dissent: Simon — 7 pages. (54)

#### Discipline

Cancellation of scheduled overtime imposed as additional disciplinary penalty — improper; grievance allowed. *Re Clark Equipment of Canada Ltd. & I.A.M.*, Loc. 2183; *Green grievance*, Dec. 14, 1982. R.J. Roberts — 8 pages. (55)

Carelessness causing damage to vehicle and resulting in one-day suspension — consistent safety reminders to all employees — potentially serious danger of incident; grievance dismissed. *Re Stelco Inc. (Hilton Works) & U.S.W.A.*, Loc. 1005; *Cherwinski grievance*, Dec. 20, 1982. Majority: R.J. Roberts, Storie; dissent: Marshall — 10 pages. (56)

Damaging company property; grievance dismissed. *Re Wabco Limited & U.E.*, Loc. 558; *Holland grievance*, Dec. 3, 1982. Kruger — 6 pages. (57)†

Insubordination and physical altercation with supervisor resulting in five-day suspension — record of insolence; grievance dismissed. *Re Rockcliffe Nursing Home & S.E.U.*, Loc. 204; *Lewis grievance*, Dec. 6, 1982. Majority: Adams, Bernardo; dissent: Craven; addendum: Adams — 27 pages. (58)

Insubordination and poor work performance alleged — latter not established; abusive language provoked in one case, not in another; written reprimand appropriate for latter; grievance allowed in part. *Re Burns Meats Ltd. & U.F.C.W.U.*, Loc. 139; *Keyes grievance*, Dec. 20, 1982. Davis — 31 pages. (59)†

Insubordination: refusal to follow orders resulting in one-day suspension — no extenuating circumstances; grievance dismissed. *Re Maple Leaf Monarch Company & Windsor Grain Processors Union; Charbonneau grievance*, Dec. 3, 1982. Brandt — 10 pages. (60)

Insubordination: refusal to obey order alleged — one grievance allowed; reduction of other grievor's suspension to one day. *Re Essex Nursing Home (Division of Little's Nursing Home (Essex) Ltd.) & C.U.P.E.*, Loc. 1370; *Grondin and Rider grievances*, Dec. 7, 1982. R.J. Roberts — 9 pages. (61)†

Insubordination; refusal to perform overtime work voluntarily assumed; original assignment changed by foreman — duty to comply — no defiance intended; suspension reduced to oral warning. *Re Consumers Glass Company Limited & Aluminum, Brick and Glass Workers International Union*, Loc. 200; *Lopez grievance*, Dec. 21, 1982. Little — 13 pages. (62)

Lateness resulting in five-day suspension — long record of lateness and absenteeism, discipline progressive; grievance dismissed. *Re Stelco Inc., Hilton Works, & U.S.W.A.*, Loc. 1005; *Sudar grievance*, Dec. 20, 1982. Majority: Brunner, Brady; dissent: Marshall — 8 pages. (63)

Procedure — grievor not given written notice of discipline — required by collective agreement; suspension cannot stand; grievance upheld. *Re Brown Boveri Canada Inc. & C.U.O.E.; Ward grievance*, Dec. 18, 1982. Hearn — 7 pages. (64)†

Suspension pending criminal charges — reinstatement after charges withdrawn; company only liable for delay in reinstating grievor after charges withdrawn. *Re Teck Corporation Limited & U.S.W.A.; Cloutier grievance*, Nov. 22, 1982. O'Shea, Othmer, Farrell — 17 pages. (65)\*

Unauthorized absence from work place — no delay in mail delivery; grievance allowed. *Re Canada Post Corporation & Letter Carriers' Union of Canada; McQuilkin grievance*, Dec. 1, 1982. Kates — 7 pages. (66)

Unsafe work performance — grievor partly responsible; grievance dismissed. *Re Domtar Inc., Domtar Chemicals Group, & E.C.W.U.*, Loc. 24; *Marques grievance*, Dec. 6, 1982. Devlin — 15 pages. (67)†

Work performance — careless and dangerous operation of truck; grievance dismissed. *Re Coca Cola Ltd. & Brewery Workers; Gratton grievance*, Dec. 21, 1982. Hinnegan — 5 pages. (68)

Work performance: three days suspension for poor work causing safety hazard — grievor not forced to hurry; grievance dismissed. *Re Stelco Inc., Hilton Works, & U.S.W.A.*, Loc. 1005; *MacIntosh grievance*, Dec. 20, 1982. Majority: R.J. Roberts, Kenny; dissent: Marshall — 8 pages. (69)

Work performance unsatisfactory — five days suspension and job transfer excessive penalty; suspension reduced to one day. *Re Salvation Army Grace Hospital, Windsor, & S.E.U.*, Loc. 210; *Paciolla grievance*, Dec. 20, 1982. Majority: Brent, Hodges; dissent: Burnell; addendum: Brent — 13 pages. (70)

**Employment Status**

Part-time teacher assigned temporary full-time load — provision against crediting for benefit and seniority purposes; grievance dismissed. *Re Northumberland and Newcastle Board of Education & Federation of Women Teachers' Associations of Ontario; Tuttle grievance*, Nov. 25, 1982. Carter — 10 pages. (71)

**Estoppel**

Informal settlement of grievance — not intended to be permanent; company not estopped from changing rate of pay. *Re Burns Meats Ltd. & U.F.C.W.U., Loc. 139; Brooks grievance*, Dec. 20, 1982. Barton — 11 pages. (72)†

Lay-off in accordance with past practice — new provision followed by unchallenged lay-offs, union estopped from claiming strict adherence to new provision. *Re Cooper & Beatty Ltd. & Toronto Typographical Union, Loc. 91; Brown and Blair grievances*, Dec. 3, 1982. Houston — 20 pages. (73)†

Union's acquiescence to unilateral introduction of compulsory pension deductions — detrimental reliance; union estopped from grieving until expiry of present agreement. *Re Steinberg Inc. (Miracle Food Mart Division) & Teamsters Loc. 419; policy grievance*, Dec. 13, 1982. Majority: Adams, MacLeod; dissent in part: Stewart — 42 pages. (74)\*

Union promise to forbear claim to higher wage rate for workers on temporary transfer to fork lift — estoppel raised against union seeking payment; grievances dismissed. *Re Dow Chemical Canada Inc. & E.C.W.U., Loc. 672; Kreviazuk, Churchman, Westgate, Peacock and Smith grievances*, Dec. 17, 1982. Majority: R.J. Roberts, Addario; dissent: Robbins — 17 pages. (75)\*

Use of unpaid students as classroom demonstrators — previous settlement applicable — employer estopped from arguing different interpretation; grievances allowed. *Re University of Toronto & Canadian Union of Educational Workers, Graduate Assistants Association, Loc. 2; group and policy grievances*, Dec. 16, 1982. Majority: Carter, Sanders; dissent: Cook — 17 pages. (76)

Admitted violation of provision governing changes in incentive standards — failure to prove union's acquiescence; estoppel not applicable and grievance allowed. *Re Livingston Industries Limited & International Woodworkers of America, Loc. 2-342*, Nov. 30, 1982. Majority: Saltman, Navarettta; dissent: Lanigan — 10 pages. (77)

**Evidence**

Polygraph test — no weight given to evidence, potential for error and industrial relations policy considerations, but witness's willingness to submit to test considered in his favour. *Re Canada Post Corporation & C.U.P.W.; Lamb grievance*. See (29), *supra*. (78)\*

Tenure application — deletion of names of referees; no unfairness in light of nature of statements. *Re Queen's University & Professor Arthur E. Zimmerman*. See (35), *supra*. (79)

**Grievance Procedure**

Timeliness and matter of leave of absence for inclement weather — grievance untimely and more properly brought as individual rather than policy grievance to determine extenuating personal circumstances; grievance dismissed. *Re Cambrian College & O.P.S.E.U.; policy grievance*, Dec. 10, 1982. Majority: O'Shea, Courtney; dissent: Robbins — 17 pages. (80)

**Holidays**

Entitlement to a particular day as floater holiday; holiday granted to other more senior employee — no breach of agreement; grievance dismissed. *Re Great Lakes Forest Products Limited & Canadian Paperworkers Union, Loc. 39; Bernstein grievance*, Dec. 17, 1982. Majority: O'Shea, Holt; dissent: Richards — 15 pages. (81)

Statutory holidays — by-law effectively passed establishing Sir John A. Macdonald Day as civic holiday and holiday proclaimed; grievance allowed. *Re Kingston Public Utilities Commission & Canadian Brotherhood of Railway, Transport and General Workers, Loc. 291; policy grievance*, Dec. 6, 1982. Majority: D. Scott, Weisbach; dissent: Wright — 19 pages. (82)

**Holiday Pay**

Eligibility requirements — provision for temporary lay-off exception, grievor unavailable at date of recall; grievance dismissed. *Re Livingston Industries Inc. & International Woodworkers of America, Loc. 2-89; Quinlan grievance*, Dec. 3, 1982. Majority: Kirkwood, Hetz; dissent: Smiley — 12 pages. (83)

Qualifying days: grievor absent for one of the qualifying days because of illness and received sick pay — within exception to disentitlement; grievance allowed. *Re Dominion Stores Limited & Retail, Commercial and Industrial Union, Loc. 206; McQueen grievance*, Dec. 9, 1982. H. Brown, White, Rudrum — 8 pages. (84)

Qualifying day; grievor entitled only to partial sick leave on qualifying day — not qualified for holiday pay for next day; grievance dismissed. *Re Sudbury, Corporation of City of, & C.U.P.E., Loc. 1662; Proulx grievance*, Dec. 6, 1982. Duchesneau-McLachlan — 5 pages. (85)†

**Job Evaluation**

New job — evidence established that wage rate set fair and reasonable; grievance dismissed. *Re Bundy of Canada Limited & U.A.W., Loc. 1352; policy grievance*, Dec. 13, 1982. H. Brown — 11 pages. (86)

**Job Posting**

Lateral transfers: equal status given to applicants for both lateral transfer and promotion — consideration of lateral transfers allowable only in specified circumstances; referred back to employer for reconsideration. *Re Ontario Hydro & Ontario Hydro Employees' Union; union grievance*, Dec. 22, 1982. Majority: Springate, McCullough; dissent: Bressner; addendum: McCullough — 25 pages. (87)

Posting cancelled; new position filled by displaced employee — bumping rights inapplicable to vacancies; grievance allowed. *Re Niagara, Regional Municipality of, & C.U.P.E., Loc. 1287; Bishop grievance*, Dec. 6, 1982. Majority: Weatherill, Marshall; dissent: Anderson — 14 pages. (88)\*

**Job Vacancy**

Existence of vacancy — job posting grievance not to be used to defeat employer's right to contract out; grievance dismissed. *Re Stelco Inc., Hilton Works, & U.S.W.A., Loc. 1005; union policy grievance*, Dec. 21, 1982. Verity — 8 pages. (89)†

**Lay-off**

Bumping: rate of pay — grievor earning top rate at former job — capable of performing new job without training — to be paid top rate; grievance allowed. *Re Bray Rivet and Machine Company Ltd. & U.E., Loc. 522; Latimer grievance*, Dec. 7, 1982. Hearn — 6 pages. (90)†

Inventory lay-off — seniority provisions applicable as express reference to inventory in collective agreement; grievance allowed in part. *Re International Parts (Canada) Ltd. & U.S.W.A.; union grievance*, Dec. 15, 1982. Black — 9 pages. (91)†

Notice — claim made under provisions of different collective agreement; grievances dismissed. *Re Silverwood Dairies & Teamsters Loc. 647; former Borden employees' grievances*, Dec. 9, 1982. Majority: Brent, Wakely; dissent in part: Tait — 18 pages. (92)

Part-time employees hired after regular employees laid off — causal relationship not proven, employer not required to keep regular employees at part-time hours; grievance dismissed. *Re Mike's Food Stores (Hearst) Ltd. & Lumber and Sawmill Workers Union, Loc. 2995; union policy grievance*, Dec. 20, 1982. Houston — 8 pages. (93)†

Provision for opportunity to train interested employees on new equipment — company not required to train unnecessary personnel; grievance dismissed. *Re Cooper & Beatty Ltd. & Toronto Typographical Union, Loc. 91; Brown and Blair grievances*. See (73), *supra*. (94)†

Qualifications: company judgment that grievors unable to perform jobs into which they had bumped — all but one failed to meet reasonable standards; all but one grievance dismissed. *Re Webster Mfg. (London) Limited & International Molders' and Allied Workers' Union, Loc. 49; Anagnopoulos and others grievances*, Dec. 22, 1982. Barton — 9 pages. (95)

Qualifications: grievor lacking ability to perform work available; grievance dismissed. *Re E.B. Eddy Forest Products Ltd. & O.P.E.I.U., Loc. 421; Wolfe grievance*, Dec. 13, 1982.

Majority: Hinnegan, Anissimoff; dissent: McVey — 9 pages. (96)

Qualifications: grievor lacking requisite skill; grievance dismissed. *Re Ontario Banknote Ltd. & Toronto Typographical Union, Loc. 91; Taylor grievance*, Dec. 7, 1982. Boscariol — 8 pages. (97)†

Qualifications: grievor lacking requisite skills; grievance dismissed. *Re Ontario Institute for Studies in Education & O.P.S.E.U.; Elias grievance*, Nov. 26, 1982. Knopf — 21 pages. (98)†

**Leave of Absence**

Leave denied on basis of fixed policy — no obligation to decide on individual basis; grievance dismissed. *Re Toronto East General and Orthopaedic Hospital Inc. & S.E.U., Loc. 204; Khalil grievance*, Dec. 10, 1982. Betcherman — 4 pages. (99)†

**Management Rights**

Medical examination by company doctor — company rule to that effect unreasonable; grievor willing to have her doctor satisfy employer's requirements; grievance allowed. *Re Air Canada & Canadian Air Line Employees Association; Gaudreault grievance*, Nov. 22, 1982. Simmons — 23 pages. (100)\*

Unilateral introduction of compulsory pension plan deductions — no term or condition to exist outside agreement with union; declaration that deductions inconsistent with collective agreement. *Re Steinberg Inc. (Miracle Food Mart Division) & Teamsters Loc. 419; policy grievance*. See (74), *supra*. (101)\*

**Overtime**

Distribution: company not required to select workers from the whole department but only from those on area schedule; grievance dismissed. *Re Algoma Steel Corporation Ltd. & U.S.W.A., Loc. 2251; Morton grievance*, Dec. 3, 1982.

Majority: Brent, Beresford; dissent: Woodcock — 6 pages. (102)

Distribution: employees normally performing work to be given first opportunity — includes those who have completed shifts and left work; grievance allowed. *Re Ingersoll Machine and Tool Company Limited & U.S.W.A., Loc. 2918; Countryman grievance*, Dec. 8, 1982. Brandt — 9 pages. (103)

**Premium Pay**

Call in: provision for payment of not less than equivalent of four hours straight-time rate — satisfied when paid at overtime rate for hours worked and normal work-week hours exceeded; grievance dismissed. *Re Weston Bakeries Ltd. & Retail, Wholesale, Bakery and Confectionery Workers Union, Loc. 461; Spencer grievance*, Dec. 9, 1982. H. Brown, Fillion, Spaxman — 8 pages. (104)

**Probationary Employees**

Temporary employee kept on past employment term — later hired on full-time basis; probationary period to date from end of temporary term. *Re St. Vincent Hospital, Ottawa, & I.U.O.E., Loc. 796; Belanger grievance*. See (47), *supra*. (105)

**Procedure**

Adjournment: company requiring additional information to prepare defense — should be within union's capacity to provide; adjournment granted. *Re McDonnell Douglas Canada Ltd. & U.A.W., Loc. 673; policy grievance*, Dec. 13, 1982. Burkett — 6 pages. (106)

Notice to interested parties where allegation that persons outside bargaining unit performing bargaining-unit work — notice to outside persons required. *Re Zehrs Markets & Retail Clerks Union, Loc. 1977; union policy grievance*, Dec. 16, 1982. Majority: Brunner, Reilly; dissent: Sargeant — 13 pages. (107)

Subpoena *duces tecum* — request for employer minutes too broadly phrased, for unspecified time period; employer objection upheld, subpoena set aside — interim award. *Re Algonquin College & O.P.S.E.U.; union policy grievance*, Dec. 3, 1982. Majority: H. Brown, Shuttleworth; dissent: Robbins — 15 pages. (108)

**Promotion**

Qualifications: grievor lacked requisite job seniority and qualifications; grievance dismissed. *Re International Wallcoverings, Division of International Paints (Canada) Limited, & Canadian Paperworkers Union, Loc. 305; Spira grievance*, Dec. 8, 1982. Brunner, Brisbin, Weisbach; addendum: Weisbach — 14 pages. (109)

Qualifications for lead hand — successful applicant had more of relevant experience, better leadership abilities; grievance dismissed. *Re Organon Canada Ltd. & Teamsters Loc. 412; Graf grievance*, Dec. 15, 1982. O'Shea — 11 pages. (110)

Qualifications: grievor lacking requisite proficiency in English; grievance dismissed. *Re Kingston General Hospital & C.U.P.E., Loc. 1974; Espisito grievance*, Dec. 2, 1982. Simmons, Pettigrew, Wright — 9 pages. (111)

Qualifications: ability and fitness — senior grievor had broken wrist at time of job posting; short-term job required to be done immediately; grievance dismissed. *Re Dresser Industries Ltd. (Industrial Products Division, Cambridge Plant) & U.S.W.A., Loc. 5475; Montgomery grievance*, Nov. 23, 1982. H. Brown — 15 pages. (112)

Qualifications: non-competitive seniority — typing standards set unreasonably high; grievor would improve over trial period; grievance allowed. *Re London, Corporation of City of, & C.U.P.E., Loc. 101; Caspell grievance*, Dec. 20, 1982. Rayner — 11 pages. (113)†

Qualifications: senior grievor's knowledge, efficiency and ability not relatively equal to incumbent's; employer's judgment not arbitrary or discriminatory; grievance dismissed. *Re Simcoe, Corporation of Town of, & C.U.P.E., Loc. 246; Anderson grievance*, Dec. 24, 1982. Devlin — 20 pages. (114)†

#### Recall

Qualifications: grievor more senior and qualified to do work; grievance allowed. *Re Galt-British Forge Company & U.S.W.A., Loc. 8818; Roberts grievance*, Dec. 27, 1982. Samuels — 4 pages. (115)

#### Retirement

Forced retirement at age sixty-five — provisions against age discrimination before the age of seventy-one; reinstatement with partial compensation. *Re United Steelworkers of America, Loc. 6500, & O.P.E.I.U., Loc. 343; Dunnigan grievance*, Nov. 23, 1982. Majority: Swan, Brown; dissent: Carriere — 17 pages. (116)\*

#### Scheduling of Work

Right to schedule regular weekend shifts without overtime pay — new wording in collective agreement not ambiguous; *Res judicata* and estoppel rejected; grievance dismissed. *Re North York, City of, & North York Civic Employees Union, Loc. 94 (C.U.P.E.); union policy grievance*, Dec. 21, 1982. Knopf — 24 pages. (117)†

#### Seniority

Calculation — seniority to accrue during maternity leave; grievance allowed. *Re Participation House, Brantford, & C.U.P.E.; White grievance*, Dec. 3, 1982. Knopf — 19 pages. (118)†

Dovetailing where purchase of company — employees' rights cannot extend beyond bargaining unit; grievances dismissed. *Re Silverwood Dairies & Teamsters Loc. 647; former Borden employees' grievances*. See (92), *supra*. (119)

Employees returned to bargaining unit after promotions to supervisor — provision restricting seniority applicable only to job posting — master seniority to include time spent as supervisors; grievance dismissed. *Re Libbey-St. Clair Inc. & Aluminum, Brick and Glass Workers Union, Loc. 235; policy grievance*, Dec. 24, 1982. Swan — 15 pages. (120)†

Supervisor returned to bargaining unit — collective agreement defines seniority as starting from date of last entering bargaining unit — no carry-over of seniority; grievance allowed. *Re Butler Metal Products Ltd. & U.A.W., Loc. 1780; union policy grievance*, Nov. 25, 1982. Weatherill — 6 pages. (121)

#### Transfer

Qualifications: senior employees temporarily transferred from department — inability to perform required work; grievances dismissed. *Re Standard Tube Canada Limited & U.A.W., Loc. 636; Halls and Durst grievances*, Dec. 10, 1982. R.J. Roberts — 8 pages. (122)

Temporary transfer to higher classification — full responsibility of position not assumed; grievance dismissed. *Re Al-Mar Nursing Home & S.E.U., Loc. 204; Wood grievance*, Dec. 21, 1982. Saltman, Brisbin, Lewis — 5 pages. (123)

#### Union Rights

Request for copies of all job descriptions — bona fide reasons — information not reasonably available through own resources — not restricted to individual grievance situations; grievance allowed. *Re Carleton University & C.U.P.E., Loc. 2424; union policy grievance*, Dec. 21, 1982. Kates — 12 pages. (124)†

#### Vacations

Back to work memorandum — agreement not to prorate entitlement as a result of strike; grievance allowed. *Re Wardair Canada (1975) Ltd. & C.A.L.F.A.; policy grievance*, Dec. 10, 1982. Springate — 26 pages. (125)

Entitlement — grievor entitled to extra week vacation as of fifth anniversary date; no need to wait until start of next vacation year; grievance allowed in part. *Re Morrisette Manufacturing and Sales Ltd. & U.S.W.A.; Loc. 7964; Plante grievance*, Dec. 5, 1982. Duchesneau-McLachlan — 7 pages. (126)†

Scheduling — operational requirements prevail over seniority; departmental employees not interchangeable; area seniority governs; grievance dismissed. *Re Algoma Steel Corporation Ltd. & U.S.W.A., Loc. 2251; Konka grievance*, Dec. 3, 1982. Majority: Brent, Beresford; dissent: Woodcock — 5 pages. (127)

#### Vacation Pay

Work-sharing program reduced hours worked in year — provision limiting full entitlement applicable; grievance dismissed. *Re Inglis Limited & U.S.W.A., Loc. 2900; policy grievance*, Dec. 22, 1982. O'Shea — 9 pages. (128)

#### Wages

Calculation — employer erred in calculation of rate of pay owing to employee who had changed from full-time to part-time; grievance allowed. *Re Participation House, Brantford, & C.U.P.E.; Tanner grievance*, Nov. 29, 1982. McLaren — 11 pages. (129)†

Calculation — no error in compensation at top rate in grievor's classification; grievance dismissed. *Re Cryovac Division, W.R. Grace Co. of Canada Ltd., & C.U.O.E.*, Loc. 101; *Burridge grievance*, Dec. 3, 1982. Black — 7 pages. (130)†

Change in job content resulting in change of pay rate — grievor spent minority of time at higher-rated job; grievance dismissed. *Re Burns Meats Ltd. & U.F.C.W.U.*, Loc. 139; *Brooks grievance*. See (72), *supra*. (131)

Change in payment system — not all monies paid in contract year; declaration of employer's breach. *Re Seneca College & O.P.S.E.U.*; *Levi grievance*, Dec. 4, 1982. Brent, Shuttleworth, Cochrane — 6 pages. (132)

#### Welfare Plans

Drug benefit plan — coverage provided not less extensive than that required by collective agreement; grievance dismissed. *Re Boots Drug Stores (Canada) Ltd. & R.W.D.S.U.*, Loc. 414; *policy grievance*, Dec. 6, 1982. Majority:

Weatherill, Bresner; dissent: McArthur — 10 pages. (133)

Long term disability benefits — conflict between insurance plan and collective agreement: clear language of latter governs — payments indexed; grievance allowed. *Re Consolidated Bathurst Packaging Ltd. & International Woodworkers of America*, Loc. 2-69; *union policy grievance*. See (16), *supra*. (134)†

O.H.I.P. premiums: new collective agreement required company to continue to pay contributions — same percentage, not same dollar value; grievance allowed. *Re Borg Textiles Canada Inc. & Amalgamated Clothing and Textile Workers Union*, Loc. 971; *union grievance*, Dec. 6, 1982. Verity — 6 pages. (135)

Provision that company supply basic information to employees — compliance except with respect to dental plan; details of information still required to be distributed. *Re Wallace Barnes Company Limited & U.S.W.A.*, Loc. 8761; *union grievance*, Nov. 1, 1982. Verity — 7 pages. (136)†

#### Work Assignment

Civilian personnel replacing police as Court Security Officers — substantially different functions; grievance dismissed. *Re Toronto, Board of Commissioners of Police for Municipality of Metropolitan, & Metropolitan Toronto Police Association*; *union grievance*, Dec. 15, 1982. Swan — 35 pages. (137)

Compensation — company failed to honour promise to pay money to grievor to settle grievance against assignment of extra work; grievance allowed. *Re Charles Wilson Limited & Brewery Workers*, Loc. 384; *Walker grievance*, Nov. 23, 1982. Brent — 5 pages. (138)†

Employee from outside bargaining unit assigned bargaining-unit work — evidence that only available part-time employee could not be reached; past practice of calling in full-time employees not established; grievance dismissed. *Re Barton Place Nursing Home & C.U.P.E.*, Loc. 1565; *Martin and Douglas grievance*, Dec. 1, 1982. Majority: Hinnegan, Murray; dissent: Bird — 8 pages. (139)

Owner's family doing work formerly performed by bargaining unit — only owner-managers permitted to displace bargaining-unit employees; grievance allowed in part. *Re Laurentian Hotel (Manoir Hotel Ltd.) & R.W.D.S.U.*, Loc. 579; *direct difference grievance*, Nov. 22, 1982. Weatherill — 12 pages. (140)\*

Pupil-teacher ratio — establishment of enrolment figures as basis, no formula in collective agreement; management formula reasonable; grievance dismissed. *Re East Parry Sound Board of Education & O.S.S.T.F.*; *union policy grievance*, Dec. 6, 1982. Majority: Dunn, McNaughton; dissent: Ryder — 9 pages. (141)

Supervisors performing work similar to that performed when members of bargaining unit — specific provision allows practice; grievance dismissed. *Re Continuous Colour Coat Limited & U.S.W.A.*, Loc. 7685; *union grievance*, Dec. 3, 1982. Knopf — 9 pages. (142)†

Temporary assignment to perform requirements of non-bargaining unit supervisory job — not a transfer outside bargaining unit; grievances dismissed. *Re Victoria Hospital Corporation & London and District Service Workers' Union*, Loc. 220; *Anacleti, Boyd, Cooper grievances*, Nov. 15, 1982. Adams, McDermott, Lewis; addendum: Lewis — 9 pages. (143)

Unilateral transfer of work to another bargaining unit — no provision limiting general management rights; grievance dismissed. *Re Labatt's Ontario Breweries (Waterloo Plant) & Brewery Workers Union*, Loc. 173; *policy grievance*, Nov. 16, 1982. H. Brown — 15 pages. (144)

#### The Hospital Labour Disputes Arbitration Act

The following interest arbitration awards under *The Hospital Labour Disputes Arbitration Act* were filed with the Office of Arbitration during the month of December, 1982.

*Cikent Corporation Ltd. & S.E.I.U.*, Locs. 268 and 478. Kruger, Brisbin, Lewis; addenda to follow: Brisbin, Lewis — 6 pages.

*Crescent Park Lodge (Medi Park Lodges Inc.) & Christian Labour Association of Canada* (interim award). O'Shea, Graham, Adema — 6 pages.

*Maitland Manor Ltd. & O.N.A. (full-time)*. Waisglass; dissent to follow: Hayter; dissent: Mayne — 17 pages.

*Maitland Manor Ltd. & O.N.A. (part-time)*. Waisglass; dissent to follow: Hayter; dissent: Mayne — 15 pages.

*Marshall Gowland Manor (Sarnia, Corporation of City of, & London and District Service Workers' Union*, Loc. 220. Majority: P. Picher, Lewis; dissent to follow: Drmaj; addendum to follow: Lewis — 22 pages.

*River Glen Haven Nursing Home & C.U.P.E. (part-time)*. Black, Wakely, Robbins; addendum to follow: Wakely; addendum: Robbins — 8 pages.

*Trillium Villa Nursing Home & London and District Service Workers' Union*, Loc. 220. (preliminary award). Majority: Swan, Rhinelander; dissent: Lewis; addendum: Swan — 17 pages.







